

(1987) 09 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 2232 of 1986

Ramanarayan Sahoo and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Hindu Religious Endowments Act, 1951 — Section 35, 35(2)

Citation : AIR 1988 Ori 219

Hon'ble Judges : K.P. Mohapatra, J;B.K. Behera, J

Bench : Division Bench

Advocate : S. Misra 2, B. Das, A.K. Misra and K. Kar, for the Appellant; Standing Counsel, R.K. Mohapatra, A.S. Naidu and B. Rautray, for the Respondent

Judgement

K.P. Mohapatra, J.—In this writ petition, the petitioners have challenged Annexure 7, an order passed by the Law Minister (opposite party No. 2) exercising the powers of the State (opposite party No. 1) remanding the case of disqualification of the hereditary trustee and Mahant of Biranchinarayan Math of Budguda in Ganjam district (opposite party No. 4) for further enquiry by the Commissioner of Endowments (opposite party No. 3).

2. The facts of the case are too many, but those relevant have been stated as briefly as possible. On the complaint of some persons the Commissioner of Endowments (opposite party No. 3) inspected the Biranchinarayan Math of Buguda in Ganjam district ("Buguda Math"s for short) of which opposite party No. 4 was the hereditary trustee and Mahant. He found serious irregularities and initiated a proceeding u/s 35 of the Orissa Hindu Religious Endowments Act (hereinafter referred to as the "Act") suo motu for disqualification and brought the following charges :

(i) Opposite party No. 4 had ceased to profess and practice the tenets of Nehangi cult and was leading a wordly life having married a lady named Shashikala Das begetting children through her.

(ii) Transferred properties of the Buguda Math by executing deeds of lease in favour of different persons for consideration and misappropriated the lease premiums.

(iii) He had persistently and wilfully defaulted in maintenance of proper accounts of income and expenditure and in payment of contribution to the endowment's fund; and

(iv) He installed a rice mill in the premises of the Buguda Math without payment of rent.

3. During pendency of the proceeding, the Commissioner of Endowments (opposite party No. 3) made an arrangement in exercise of powers u/s 7 of the Act, suspended opposite party No. 4 and appointed an Inspector of Endowments as a fit person or interim trustee to manage the affairs of the Buguda Math. Opposite party No. 4 challenged the order in this Court in O.J.C. No. 111 of 1978 but the same was dismissed *Raghubar Ramanuja Das Vs. Commissioner of Endowments and Others*, The proceeding u/s 35 of the Act was disposed of by the Commissioner of Endowments (opposite party No. 3) ex parte by order dt/- 5-2-1979 and opposite party No. 4 was disqualified for being the hereditary trustee and Mahant of Buguda Math. The Math. The State Government (Opposite Party No. 1) approved the order of the Commissioner of Endowments on 14-9-1979, whereby, opposite party No. 4 ceased to hold the office. Opposite Party No. 4 thereafter preferred an appeal in this Court (M.A. No. 211 of 1979) which was allowed by judgment dt/- 21-3-1985 and the case was remanded for fresh enquiry. After making fresh enquiry the Commissioner of Endowments (opposite party No. 3) by order dt/- 29-6-1985 (Annexure 2) again disqualified opposite party No. 4 for life from the office of hereditary trustee and Mahant of Buguda Math. The order was approved by the State Government (opposite party No. 1) by order dt/- 16-10-1985 (Annexure 3) and so the removal of opposite party No. 4 from office was complete. The order of disqualification was communicated to opposite party No. 4 as would appear from Annexure 4. On receiving the order he did not prefer any appeal to this court as on the previous occasion, but filed a petition before the Law Minister (opposite party No. 2) inter alia contending that the order of approval (Annexure 3) of the State Government was passed behind his back without notice to him in gross violation of the principle of natural justice. Therefore, the order of disqualification should be vacated and he should be reinstated in office. The Law Minister (opposite party No. 2) did not direct service of notice on the petitioners and disposed of the petition by order Annexure 7 vacating the order of the Commissioner of Endowments Annexure 2), as well as the earlier order of approval of the State Government in Annexure 3 and directed re-enquiry into the charges after giving adequate opportunities to the parties to adduce further evidence. Simultaneously he restored opposite party No. 4 to office and directed that he shall manage the affairs and the property of the institution. The order was communicated to the petitioners by a letter (Annexure 5). The petitioners have averred that according

to the scheme, more specifically the provisions of Section 35 of the Act, once the State Government gave approval to the order of disqualification it became functus officio and in that view of the matter, particularly in the absence of any provision for review, the Law Minister (opposite party No. 2) and for that matter the State Government had absolutely no jurisdiction to vacate the order of approval (Annexure 3) and substitute a new one in its place. While reviewing the earlier order of approval no notice was given to the petitioners affording them a chance of hearing and thereby the principle of natural justice which had actuated the Law Minister (opposite party No. 2) to dispose of the petition of opposite party No. 4 was not complied with. The petitioners have challenged the action of the Law Minister (opposite party No. 2) as mala fide and a fraud for colourable exercise of his powers of the State. Annexure 7 being wholly illegal and without jurisdiction is, therefore, liable to be quashed and Annexures 2 and 3 restored.

4. Opposite parties 1 and 2 in their counter stated that the Law Minister having not passed the impugned order (Annexure 7) in his personal capacity, but having acted in his official capacity representing the State Government, he should not have been impleaded as a party. As Law Minister he performed his statutory functions u/s 35(2) of the Act and strictly adhered to the principle of natural justice. Therefore, his actions were bona fide and far from being mala fide as alleged by the petitioners. After the Commissioner of Endowments passed the order (Annexure 2) on 29-6-1985 and before he sought for approval of the State Government as provided in Section 35(2) of the Act, opposite party No. 4 filed a petition on 19-7-1985 before the State Government challenging the order Annexure 2 and for setting aside the same. After receipt of the said petition, the Law Minister passed an order on the margin directing that it should be put up when the question of according approval to Annexure 2 shall come up before the State Government. But unfortunately the petition was never put up before him on account of inadvertence and so the facts stated in the said petition were not taken into consideration when the State Government accorded approval to Annexure 2 on 11-10-1985. It is further stated that before passing the order of approval on 11-10-1985 opportunity was not given to opposite party No. 4 for hearing. Therefore, on 19-10-1985 he filed another petition for reconsideration of his prayer. When this petition was put up, the State Government passed orders to the effect that though there is no provision in the Act for review of its earlier order, yet the provisions of the C.P.C. are applicable to an enquiry u/s 35 of the Act and for adhering to the principle of natural justice and fair play opposite party No. 4 should be given opportunity of being heard before final orders were passed on the question of according approval to Annexure 2. Since opposite party No. 4 was affected in the proceeding and an order had been passed by the Commissioner of Endowments disqualifying him for life he alone was heard at the time of according approval to Annexure 2. It was not necessary to hear the petitioner and so no notice was given to them, particularly when the proceeding had been started by the Commissioner of Endowments suo motu. After hearing opposite party No. 4, the impugned order Annexure 7 was passed according to

law and so it is not liable to be challenged on any ground whatsoever.

5. It is averred that while discharging the statutory functions conferred u/s 35(2) of the Act the State Government has to act legally and apply its mind to the facts of the case for approving or refusing to approve the order of the Commissioner of Endowments u/s 35(1) of the Act. The function is not of executive character, but is quasi-judicial. While exercising powers u/s 35(2) the State Government has every right to hear the party affected by the order under Sub-section (1). When the State Government has power to approve, it has also got power not to approve the order passed by the Commissioner of Endowments u/s 35(1). When the State Government does not approve the order of the Commissioner of Endowments, it has every right to direct remand for fresh enquiry and this was exactly done in this case by the impugned order, Annexure 7. In the aforesaid background it is stated that Annexure 7 being a legal and valid order in terms of Section 35(2) of the Act cannot be quashed.

6. Opposite party No. 4 in a separate affidavit inter alia stated that after the order of disqualification dt/- 29-6-1985 (Annexure 2) was passed by the Commissioner of Endowments and before the order of approval was passed by the State Government, he had filed a petition before the Law Minister (opposite party No. 2) on 19-7-1985 (copy Annexure A). This petition was pending before the State Government when the order of approval dt/-11-10-1985 (Annexure 2) was passed without taking notice of the petition due to inadvertence. After the ex parte order of approval (Annexure 3) was communicated to him by Annexure 4, he filed a petition on 19-10-1985 before the Law Minister (opposite party No. 2) reminding him of his previous petition dt/-19-7-1985 and prayed for recalling of the ex parte order of approval. Thereafter, the Law Minister (opposite party No. 2) after complying with the principle of natural justice vacated the ex parte order of approval (Annexure 3) and passed the order (Annexure 7) strictly in accordance with the provisions of Section 35(2). It is stated that proceedings u/s 35 of the Act are quasi-judicial in nature. According approval by the State Government is similarly a quasi-judicial act. Disqualification of a hereditary trustee gives rise to far reaching civil consequences and is of a penal nature, because thereby the hereditary trustee loses his right of performance of Seva Puja and rituals of the deity and is debarred from managing and possessing the movable and immovable properties. In such an event it was imperative on the part of the State Government to give personal hearing to the person affected by the order of disqualification namely, the hereditary trustee in accordance with the principle of natural justice and this was what opposite parties 1 and 2 actually did by giving him a personal hearing before passing the order, Annexure 7. In the aforesaid premises a legal and valid order (Annexure 7) should not be quashed.

7. Mr. S. Misra, learned counsel appearing for the petitioners urged that neither the State Government (opposite party No. 1) nor the Law Minister (opposite party No. 2) has power of review while performing quasi-judicial functions under the provisions of the Act. Therefore, after having accorded approval of the order

(Annexure 3) passed by the Commissioner of Endowments (Annexure 2) under Sub-section (2) of Section 35 they had no jurisdiction to set the said order of approval at naught by virtually vacating it and thereafter pass the impugned order (Annexure 7) after giving opportunity of hearing to opposite party No. 4 alone and without notice to the petitioners. If they were interested to strictly follow the principle of natural justice, it was but proper that notice of hearing should also have been given to the petitioners to participate in the hearing by the State Government at the approval stage before passing the impugned order (Annexure 7). The learned counsel appearing for the State Government (opposite party No. 1) and the Law Minister (opposite party No. 2), Mr. A.S. Naidu, learned counsel appearing for the Commissioner of Endowments and the learned counsel appearing for opposite party No. 4 adopted a common front and urged that the order of approval (Annexure 3) was invalid in the eye of law being void ab initio because of non-compliance of the rule of natural justice. As it was non-existent in the eye of law there was no impediment on the part of the Law Minister (opposite party No. 2) performing the functions of the State Government according to the Rules of Business of the State Government framed under Article 166 of the Constitution to hear opposite party No. 4 who was the person affected with civil consequences by virtue of the order (Annexure 2) of the Commissioner of Endowments. That apart he did not finally dispose of the disqualification proceeding, but directed an order of remand which he was entitled to do while applying his mind at the approval stage. He did not usurp the powers of the appellate court and his order was a follow up order in continuation of the order of disqualification. Now that both the parties to the dispute shall get full opportunity of contesting their respective cases before the Commissioner of Endowments no exception should be taken to the impugned order (Annexure 7).

8. Section 35 of the Act is reproduced below for easy reference : --

"35. Disqualification" of hereditary trustees : -- (1) A hereditary trustee of a math shall be declared disqualified and shall consequently cease to hold his office if he --

- (a) is of unsound mind; or
- (b) is suffering from any physical or mental disease or defect or infirmity which renders him unfit to be a trustee; or :
- (c) has ceased to profess and practise Hindu religion or tenet of the math; or
- (d) is convicted for any offence involving moral turpitude; or
- (e) has committed breach of trust in respect of any of the properties of the religious institution; or
- (f) persistently and wilfully defaults in discharging his duties or functions under this Act or any other law for the time being in force or in payment of contribution or other dues payable to Endowment Fund; or

(2) The Commissioner shall, after due enquiry in accordance with the provisions of the Act and so far as may be, of the Code of Civil Procedure, V of 1908, relating to trial of suits and with the prior approval of the State Government, declare by an order in writing whether a trustee is disqualified either temporarily or for the lifetime under this section.

(3) Any person affected by the order of the Commissioner under Sub-section (2) may within sixty days from the date of the receipt of the order by him appeal to the High Court.

(4) The hereditary trustee so disqualified may be allowed such maintenance as may be fixed by the Commissioner considering the financial condition of the institution and rules made in this behalf.

(5) If a trustee is declared disqualified under this section it shall be the duty of the Commissioner to appoint one or more persons to discharge the functions of the trustee of the institution. In making any appointment under this sub-section the Commissioner, shall have due regard to the claims of the next in the line of succession and failing this of the disciples of the math:--

Provided that in case of disqualifications falling under Clauses (a) and (b) of Sub-section (1) the appointment shall be until such period when the disqualification ceases."

According to Section 4 of the Act the post of Commissioner of Endowments can be filled up by an officer of the cadre of District Judge. The Commissioner of Endowments, according to Sub-section (2) of Section 35, has to make an enquiry with regard to disqualification of the hereditary trustee of a Math not only in accordance with the procedure provided in the Act, but also in accordance with the C.P.C. relating to trial of suits. A hereditary trustee of a Math can be disqualified either temporarily for a specified period or for his lifetime. After disqualification, he may be allowed maintenance. Because the disqualification renders him unfit to manage the institution, the Commissioner of Endowments has power to appoint one or more persons to discharge the functions of the hereditary trustee of the institution. In consequence therefore, the hereditary trustee must have to be prevented from performing his duties as such relating to the deities installed in the institution and in addition shall be completely trustee of a Math either temporarily or for lifetime is visited with civil consequences during which period all his rights with regard to the institution remain suspended (sic). The enquiry conducted by the Commissioner of Endowments under Sub-section (2) of Section 35 for disqualification must necessarily be of a quasi-judicial nature. Learned counsel appearing for both parties did not dispute this proposition.

9. If an order of disqualification is passed under Sub-section (2) of Section 35, an appeal can be preferred within the prescribed period to the High Court under Sub-section (3) thereof. In between, there is no prescribed forum to deal with the matter. Therefore, the act of according approval by the State Government

cannot be equated to disposal of an appeal. In other words, while according approval, the State Government does not function as an appellate authority. The act of according approval by the State Government is in continuation of the order of disqualification passed by the Commissioner of Endowments. Before approval is accorded, the order of disqualification is neither complete nor final, but becomes complete and attains finality when the State Government accords approval. A plain interpretation of Sub-section (2) of Section 35 will thus make it clear that the order of disqualification by the Commissioner of Endowments and the act of approval are complementary to each other. One cannot exist without the other. Both are two stages in the same proceeding. The act of approval is meant to be an additional safeguard provided by law, because a hereditary trustee of a religious institution loses civil rights. It would not, therefore, be proper to give a meaning to the act of approval which is not the intention of the legislature. So, the State Government while according approval does not function as an appellate authority. On the other hand, it is its duty to see as to whether the order of disqualification passed by the Commissioner of Endowments is supported by facts and evidence and the enquiry was conducted in accordance with the procedure laid down in the Act and the Civil P.C. while adhering to the principle of natural justice. The act of according approval is not an empty formality, but a sacrosanct act of the State Government because, approval to an order of disqualification will visit the hereditary trustee with civil consequences. The power to approve also includes the power not to approve. If the State Government has the power to approve an order of disqualification, it has also by necessary implication power not to approve the order of disqualification. If, on consideration of the order of disqualification, it will appear to the State Government that it is not based on facts and evidence or the procedures referred to above have not been strictly followed, it must necessarily have the right to refuse to approve the order of disqualification and/or give direction to the Commissioner of Endowments for further action such as, re-enquiry. Therefore, while according approval, the State Government (opposite party No. 1) and for that matter the Law Minister (opposite party No. 2) who is authorised by the Rules of Business to perform the functions of the State Government relating to his department exercise quasi-judicial functions just like Commissioner of Endowments. When an appeal is preferred under Sub-section (3) of Section 35 to the High Court not only the order of the Commissioner of Endowments is challenged, but the order of the approval of the State Government which forms part of the order is also challenged. Therefore, while I agree with the learned counsel appearing for the parties that the Commissioner of Endowments performs quasi judicial functions u/s 35, I hold that the act of approval by the State Government is equally a quasi judicial function.

10. The decisions cited at the Bar with regard to application of the principle of natural justice may now be noticed. In *State of Gujarat and Others Vs. Ambalal Haiderbhai and Others*, , it was held that the concept of natural justice has undergone a great deal of change in recent years, function is often blurred Rules

of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its contest should be for a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held, and the constitution and nature of duties of the Tribunal or the body of the persons appointed for that purpose. In *S.L. Kapoor Vs. Jagmohan and Others*, the following observation was made : --

"The old distinction between a judicial act and administrative act has withered away and we have been liberated from the psittacine incantation of "administrative action". Now, from the time of the decision of this Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, "even an administrative order which involve civil consequencesmust be made consistently with the rules of natural justice". What are civil consequences? The question was posed and answered by this Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, Krishna Iyer, J., speaking for the Constitution Bench said (at pp. 308-309) : (of SCR) : (at pp. 876-877 of AIR) : "But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequence" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."

The learned Judge then proceeded to quote from Black's Legal Dictionary and to consider the interest of a candidate at a Parliamentary election. He finally said :

"The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import."

Referring to the particular case which was under the Punjab Municipal Act applicable to the New Delhi Municipal Administration it was further observed as follows :

".....To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities in any unceremonious way as to suffer in public esteem, is certainly to visit the Committee with Civil Consequences."

In the light of the principles laid down in the aforesaid decisions and also of the settled position of law that the rule of natural justice should be observed while performing administrative and quasi judicial functions resulting in civil consequences, even though there is no specific provision in the statute, the State Government while performing quasi judicial functions in considering to accord approval for disqualification of a hereditary trustee of an institution u/s 35(2) of the Act must necessarily give opportunity to the parties to the proceeding for being heard. It was, therefore, incumbent on the State Government (opposite

party No. 1) and the Law Minister (Opposite Party No. 2) performing the duties of the State Government according to the Rules of business to adhere to the principles of natural justice and serve notice on both parties to the proceeding before passing the order according approval by Annexure 3. It is not disputed that no such opportunity was given either to the petitioners or to opposite party No. 4 and so the order of approval (Annexure 3) was void and nonexistent.

11. There is no provision for a review in the Act. Therefore, ordinarily once a legal and valid quasi judicial order is passed, it cannot be reviewed because review is a creature of the statute. It was urged by Mr. S. Misra that opposite parties 1 and 2 having no power of review of an order already passed u/s 35(2) of the Act, acted without jurisdiction while reviving the proceeding on the petition of opposite party No. 4 and then passing the impugned order (Annexure 7). The contention of Mr. Misra would have been correct, if Annexure 3, the order of approval would have been passed in accordance with law. But as already held above, for gross violation of the principle of natural justice, the order according approval (Annexure 5) was void and, therefore, a nonexistent order. So the question of review of such an order did not arise.

12. The Law Minister (Opposite Party No.2) became cognisant of the fact that the order of approval passed earlier (Annexure-3) was in gross violation of the principle of natural justice. Therefore, he wanted to adhere to the principle of natural justice and pass a reasoned order after hearing the party (Opposite Party No. 4) who was likely to be visited with civil consequences. Such contemplation on his part cannot be termed as mala fide. When a quasi-judicial authority wants to function in accordance with law it cannot be said that his action is mala fide. In this connection reference may be made to Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , in which it was held that fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power. Considered in the light of the above rule and the fact and law and in the absence of any specific material that the Law Minister had any bad, malicious or corrupt motive, it would be most improper to record that his action was mala fide and was a fraud on the power vested on him by Section 35(2) of the Act.

13. The proceeding u/s 35 of the Act was suo motu initiated by the Commissioner of Endowments. The petitioners and some persons of the locality intervened so as to expose the illegalities supposed to have been committed by opposit party No. 4. In the proceeding before the Commissioner of Endowments they actively participated and adduced evidence. Even if the proceeding is remanded to the Commissioner of Endowments they must have to be noticed to appear and participate in the proceeding. This being the position, at the stage of according approval by the State Government under Sub-section (2) of Section 35 of the Act and in accordance with the principle of natural justice, the petitioners were also entitled to notice along with opposite party No. 4 for being heard. The act of according approval being a quasi judicial proceeding presupposes application of mind to the facts and evidence of the proceeding and hearing the parties to the proceeding before according approval. It is more importantly so when the order after approval will result in civil consequences. In this case approval of the order of the Commissioner of Endowments recommending disqualification of opposite party No. 4 as the hereditary trustee and Mahant of Buguda Math for lifetime was of momentous importance resulting in loss of reputation and deprivation of rights for worship and to hold property of the institution. Therefore, the State Government had to take into consideration the facts and evidence laid by the parties. This being the position one of the parties could not alone be heard. It is not disputed that the State Government and the Law Minister gave notice only to opposite Party No. 4 who was heard before passing the impugned order (Annexure 7). In my view, a jurisdictional error was committed at this stage. In accordance with the principle of natural justice, notice should have also been issued to the petitioners for being heard by the State Government. If after notice to both parties the order of approval were passed u/s 35(2) of the Act, it would have been unexceptionable. In this view of the matter and for a very simple reason i.e., non-application of the principle of natural justice so far as the petitioners are concerned the impugned order (Annexure 7) cannot be supported and is liable to be quashed. The State Government shall issue notice to both parties to the proceeding, hear them and then pass the order according to Section 35(2) of the Act. The parties are, therefore, relegated to the stage prior to giving approval by the State Government to the order of disqualification of opposite party No. 4. This being the position, the interim order of management of the institution u/s 7 of the Act which was upheld in Raghubar Ramanuja Das Vs. Commissioner of Endowments and Others, has to be restored. The Commissioner of Endowments should take note for taking necessary action according to law.

14. For the foregoing reasons, the writ petition is allowed and Annexure 7 is quashed. The case is remitted to the State Government for disposal according to law in the light of the observations made above.

B.K. Behera, J.

15. I agree with the ultimate conclusion recorded by my learned brother. I would,

however, record some disquieting and distressing features which have been noticed by me affecting seriously the conduct of the opposite party No. 2, namely, Mr. Gangadhar Mohapatra, the then Minister of Law of this State, while disposing of the application made by the Mahant Raghuraj Ramanuj Das (Opposite party No. 4) against whom gross charges of dishonesty and immoral character had been levelled and substantiated in the proceeding before the Commissioner of Endowments (Opposite party No. 3) on the basis of the allegations made by the present petitioners.

16. As averred in the writ application, before Mr. Mohapatra joined the Cabinet, he was a Senior Advocate of the Puri Bar Association. He has annulled the order of approval (Annexure-3) on the ground that the principles of natural justice had not been followed because the Mahant had not been noticed and heard., While judging the proceedings before him, the then Minister was well aware that the present petitioners had made allegations against the Mahant and had led evidence before the Commissioner of Endowments and they were parties to the proceedings. If the Minister had the bona fide intention of annulling the order of approval only because the Mahant had not been noticed and heard by the State Government before the order of approval was accorded, he should not have passed the impugned order as per Annexure-7 without even issuing notices to the present petitioners for which my learned brother has considered it reasonable and fit that the matter should be remanded for hearing both the sides for consideration of the question of approval.

17. If the Minister was cognisant of the violation of the principles of natural justice in so far as the Mahant was concerned, he should not have lost sight of the same doctrine by making the impugned order as per Annexure-7 without issuing notices to the petitioners, as he would be committing the same wrong by passing an order in violation of the principles of natural justice without hearing the present petitioners.

18. The petitioners were not noticed by the Minister and only upon hearing the opposite Party No. 4, namely, the Mahant, the impugned order was passed and while nullifying the previous order of approval, the Minister even went to the length of dislodging the previous arrangement made by the Commissioner of Endowments removing the opposite party No. 4 during the course of the proceeding u/s 35 of the Act in exercise of the legal power conferred on him u/s 7 of the Act and keeping the Inspector of Endowments in charge of the management in view of the grave and gross misconduct both in regard to his moral character and misappropriation of properties of the Math levelled against the Mahant in spite of the fact that the Mahant (Opposite party No. 4) had unsuccessfully moved this Court in O.J.C. No. 111 of 1978 which had been decided on July 23, 1978 (See Raghuraj Ramanuja Das Vs. Commissioner of Endowments and Others, .

19. When in the course of the proceeding, the Commissioner of Endowments, in exercise of the power conferred on him, had suspended the opposite party No. 4

and had appointed an interim trustee for administration of the affairs of the Math and this order of suspension of the Mahant had been upheld by this High Court judicially in O.J.C. No. 111 of 1978 (reported in Raghubar Ramanuja Das Vs. Commissioner of Endowments and Others, by dismissing the writ application made by the petitioner and the order of suspension had continued till the present impugned order as per Annexure-7 was passed annulling the order of approval by the State Government and directing re-hearing, the then Minister unreasonably and unjustifiably directed that the Mahant would be reinstated and kept in charge of the management although the Mahant had been suspended since 1977. The Minister should have been well aware that he had no jurisdiction and authority in the aforesaid circumstances to interfere with this order of suspension of the Mahant keeping the properties in charge of an interim trustee which had been upheld by the High Court. The fact that this Court had, by its order dt. 21-3-1985 passed in Miscellaneous Appeal No. 211 of 1979, set aside the order of the Commissioner of Endowments dt. 5-2-1979 in O.P. No. 11-14 of 1977 and the case had been remanded would never mean that the opposite party No. 4 had ceased to remain under suspension. It must be kept in mind that even after the aforesaid order was passed by this Court in the Miscellaneous appeal, the Mahant had continued to remain under suspension and he was not in charge of the institution and its properties until a direction was made by the Minister in Annexure-7. No doubt, while passing the order that the Mahant would continue to remain in charge of the properties with all his rights of management of the institution, a direction had been given by the Minister that the Commissioner of Endowments should have a strict watch so that the properties were not alienated and contributions were paid in time, but the latter, part of the order would not indicate bona fides as even without it, the Commissioner did have power under the law to have a strict watch with regard to the alienation of the properties and for the timely payment of contribution.

20. As averred in the writ application and submitted on behalf of the petitioners, after the order was passed by the Minister to put the Mahant in charge of the properties, steps were taken by the Mahant before the Commissioner of Endowments to have the order enforced and with the help of the Police authorities, the Mahant took charge of the properties on June 10, 1986.

21. In these circumstances, the contention raised on behalf of the petitioners that the Minister had committed an act of impropriety in exercise of the executive power of the State Government in reinstating the Mahant in office which had lawfully been denied to him since 1977 by an order passed by the Commissioner of Endowments which, I repeat, had been upheld by this court, cannot be thrown over-board as unfounded.

22. Had he been actuated with a desire for proper maintenance of the properties of the Math in the interest of the institution which was so long being done by the interim trustee in view of the grane charges against the Mahant, the Minister of Law should not have disturbed the arrangement made since 1977.

23. I have recorded my view and expressed my thoughts in the foregoing paragraphs with the hope that such misuse of power should not occur in a case of this nature by putting a person charged with serious misconduct in charge of properties in spite of and in violation of judicial orders.

24. My learned brother has passed an order that the interim order of management of the institution u/s 7 of the Act which had been upheld by this court in Raghubar Ramanuja Das Vs. Commissioner of Endowments and Others, has to be restored and has directed the Commissioner of Endowments to take necessary action according to law in this regard. This direction would not brook any delay. The Commissioner of Endowments shall restore the previous arrangement made by him as expeditiously as is reasonably possible.

25. There would be no order as to the costs of this proceeding which shall be borne by the respective parties.