

(1996) 01 AP CK 0028

In the Andhra Pradesh High Court

Case No : W.A. No. 401, 576 and 1087 of 1995

Sri Yusuf Qureshi and others

APPELLANT

Vs

Moulana Mohammed Jamaluddin Deccani and others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Andhra Pradesh Government Business Rules — Rule 15, 32(1), 5(1), 8
Constitution of India, 1950 — Article 166, 166(1), 166(3), 77, 77(3)
Land Acquisition Act, 1894 — Section 4(1), 6
Preventive Detention Act, 1950 — Section 11(1)
Waqf Act, 1954 — Section 10, 10(1), 11, 11(2), 12

Citation : AIR 1996 AP 187 : (1996) 1 ALT 236

Hon'ble Judges : M.N. Rao, J;B. Atchutananda Swamy, J

Bench : Division Bench

Advocate : Mr. K. Pratap Reddy, for the Appellant; G.P. for Revenue, Mr. M.A. Bari and Mr. M.R.K. Chowdhary, for the Respondent

Judgement

M.N. Rao, J.—These three writ appeals are from the common judgment of our learned brother Motilal B. Naik, J., in W.P. Nos. 16111 and 16122 of 1994 setting aside the appointments of the appellants in W. A. No. 401 and 1087 of 1995 as members of the Andhra Pradesh State Wakf Board (for short "the Wakf Board") reconstituted by the Government of Andhra Pradesh in G.O.Ms. No. 74, Minorities Welfare (Wakf-I) Dated 26-8-1994 read with the errata issued in G.O.Ms. No. 75 dated 30-8-1994.

2. In and by the above two orders, all the appellants herein had been appointed as members of the Wakf Board u/s 11 of the Wakf Act, 1954 and they were also required to elect a Chairman under subsection (2) of Section 10 of the Act.

3. W.P. No. 16111 of 1994 was filed by two persons claiming themselves to be the Muthawallis of Masjid-e-Mohammedi and Masjid-e-Kasiri at Hyderabad while W.P. No. 16122 of 1994 was filed by Anjuman-e-Shiah Imamiya Isnah Ashrai (Akhbari), claiming to be an association of Shia Muslims of Akhbari Sect, represented by its Secretary, Syed Sajjad Razvi.

4. In W.P. No. 16111 of 1994, it was alleged, inter alia, that the reconstitution of the Wakf Board was done due to political motives keeping in view the impending general elections defeating the very purpose of the Wakf Act, that the persons appointed "could not get the appreciation of the Muslim Community" and it was publicly reported in newspapers that the Wakf Board was reconstituted "even without the knowledge of the Minister of Wakfs and Minorities --Mohd. Ali Shabbir" and that the persons appointed do not possess the requisite qualifications prescribed u/s 11 of the Wakf Act.

5. In W.P. No. 16122 of 1994, it was alleged, among others, that respondents 3 and 4 (appellants in W.A. No. 1087 of 1995) --Syed Aziz Azam and Mir Hadi Ali -- do not represent the majority sect (Akhbari) of the Shia community and they are incompetent and ineligible to be appointed as Members of the Wakf Board u/s 11 of the Walf Act.

6. In the counter-affidavit filed by Sri K. Krishnanandam, Deputy Secretary to Government, while denying the allegations, it was asserted that all the persons appointed fulfilled the statutory requirements and a "full bio-data" of the members appointed was also filed as an enclosure. Meeting the allegation that the Minister of Wakfs had no knowledge about the appointments, the counter-affidavit says, "It is also not correct to state that the Board has been constituted even without the knowledge of the Hon'ble Minister for Wakfs and Minorities Welfare". On the other hand, "the Board has been formed at his instance". The counter also alludes to the fact that in two earlier judgments, this Court had directed the constitution of separate Wakf Boards for Shias and Sunnis hut as those judgments are pending appeal before the Supreme Court, a composite Board was reconstituted. In the counter-affidavit filed on behalf of the A.P. State Wakf Board by its Secretary, the allegations regarding the incompetence of the persons appointed as members and the motives attributed to the Government have been specifically denied.

7. The learned Judge posed a preliminary question; whether the Government had any material before it while appointing the persons other than respondent No. 8 -- Mohd. Shakir, M.L.A. (appellant in W.A. No. 576 of 1995) -- about their possession the requisite qualifications prescribed u/s 11 of the Wakf Act? The appointment of only respondent No. 8 -- Mohd. Shakir -- was upheld as he happened to be a sitting M.L.A., on the date of the reconstitution of the Board and thus fulfilled the qualification prescribed under sub-clause (a) of Section 11, but all the rest were set aside on the ground that the Government had no material before it regarding their possessing the qualifications prescribed u/s 11. This conclusion was drawn by the learned Judge on the basis of the file placed before him which contained two letters -- one by the Secretary of the A.P. State Wakf Board addressed to the Secretary to the Government and the other, reply by the latter. Both the letters pertain to the period subsequent to the filing of the writ petitions. In his letter dated 12-9-1994, the Secretary of the Wakf Board brought to the notice of the Secretary to the Government, Wakfs and Minorities

Welfare, the thrust of the argument in the writ petitions that the persons "selected by the Government do not fulfil the conditions as specified u/s 11 of the Wakf Act" and requested the Government to furnish the bio-data of the categories in which the members have been selected by the Government as required u/s 11 of the Wakf Act so that it would enable the Board's standing counsel to represent the matter effectively. The Secretary to the Government, Minorities Welfare Department, in his reply dated 13-9-1994 requested the Secretary of the Wakf Board to "get the bio-data information immediately from the members and Chairman of the Wakf Board and furnish the same to the standing counsel to represent the matter in the High Court under intimation to this department". On the basis of these two letters, the learned Judge concluded that "as far as respondent No. 8 in W.P. No. 16111 of 1994 is concerned, he being a sitting M.L.A., the statutory prescription u/s 11(a) has been fulfilled" but as regards the others, the two letters "indicate that the Government had no details about their bio-data and other qualifications while appointing them as members of the Board. It is only when the writ petitions were filed and the matter had come up before this Court on 12-9-1994 for arguments, at that stage, attempts were made to get the details from the members "appointed for defending the case before the Court. When the Government had no details about respondents 4 to 7 and 9 to 14, it is impossible to presume that the Government has satisfied itself that the particulars available before it as to the fulfilment of the requirement against each member in accordance with the qualifications prescribed u/s 11(a) to (d) of the Act." Accordingly, the learned Judge allowed W.P. No. 16111 of 1994 setting aside the appointments of respondents 4 to 7 and 9 to 14. As the appointments of respondents 13 and 14 in W.P. No. 16111 of 1994 -- Aziz Azam and Mir Hadi Ali -- also were set aside, the learned Judge felt that it was not necessary to examine the issues raised in W. P. No. 16122 of 1994 in which the relief sought was for setting aside the appointments of the aforesaid two persons and accordingly disposed of the writ petition observing that no further orders are necessary.

8. When the matter came up for hearing, we entertained a doubt as to whether the action of the Chief Minister in passing the orders impugned in the writ petition was in accordance with the Business Rules framed under Article 166(3) of the Constitution of India. We, therefore, adjourned the case for further hearing so as to enable the learned counsel for both sides to examine this aspect and make their submissions. Having regard to the doubt entertained by us, we thought that one of the learned advocates should be requested to assist us as amicus curiae and our request in this regard to Sri V.V.S. Rao, an able and erudite lawyer, was readily acceded to by him. We are indebted to Sri V.V.S. Rao for the able assistance rendered by him.

9. Sri Pratap Reddy and Sri M.R.K. Choudhary, learned counsel for the appellants, have urged with vehemence that the learned Judge did not even casually mention to them about the existence of the two letters which constituted the basis for the judgment; had he done so, they would have made their

submissions both on facts and law concerning that aspect. No inference is possible on the basis of these two letters that the Government was not aware of the eligibility of the appellants or there was no material available with the Government concerning them. The Business Rules not being mandatory in nature, there was sufficient compliance. Appointment of members of the Wakf Board being a matter of policy, the Chief Minister was empowered under Rule 32 of the Business Rules to call for the file and pass orders.

10. Sri V.V.S. Rao, learned amicus curiae, in the course of his arguments has drawn our attention to the working of the Cabinet Government, the importance and role of the Chief Minister and the binding nature of the Business Rules and urged that the G.Os., impugned in the writ petitions are vitiated because of non-compliance of the Business Rules.

11. On behalf of the other respondents --petitioners in the writ petitions -- no arguments have been advanced and their counsel merely adopted the submissions of the learned amicus curiae.

12. Before considering the contentions urged, we think it necessary to advert to the relevant provisions of the Wakf Act, the Constitution of India and the Business Rules. Section 10 of the Wakf Act concerns the composition of the Wakf Board. Sub-section (1) says that the Board shall consist of 11 members in the case of a State and the Union Territory of Delhi and five members in the case of any other Union Territory. The Chairman of the Board shall be elected by the members from among themselves as per sub-section (2), Section 11, which is very material, is in the following terms:

"11. The members of the Board shall be appointed by the State Government, by notification in the Official Gazette, from any one or more of the following categories of persons, namely:--

(a) members of the State Legislature and members of Parliament representing the State;

(b) persons having knowledge of Muslim Law and representing associations such as State Jamait-ul-Ulma-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shafai) or State Shia Conference;

(c) persons having knowledge of administration, finance or law;

(d) mutawallis of wakfs situate within the State;

Provided that in no case more than one mutawalli shall be appointed to the Board:

Provided further that in determining the number of Sunni members or Shia members in the Board, the State Government shall have regard to the number and value of Sunni Wakfs and Shia Wakfs to be administered by the Board."

Under Section 12, members hold office for five years and even if the term of a

member expires, he continues to hold office until the appointment of his successor is notified in the Gazette. Section 13 specifies the disqualifications for being appointed or for continuing as member of the Board.

13. Executive action of the Government of India is taken in the name of the President and at the State level, in the name of the Governor. Articles 77 and 166 of the Constitution incorporate provisions concerning the conduct of Government business at the Union and the State respectively. Article 166 lays down:

"166. Conduct of business of the Government of a State -- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Government and the validity of an order or instruments which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

14. In exercise of the powers conferred by clauses (2) and (3) of Article 166, the Governor of Andhra Pradesh made the Andhra Pradesh Government Business Rules. Rule 5(1) says that the Governor shall, on the advice of the Chief Minister, allot the business of the Government among the ministers by assigning subjects in one or more departments to the charge of a minister. If a particular department is in charge of more than one minister, the senior most of those ministers who is substantially concerned with the department shall be deemed to be in administrative charge of the department. As per Rules 8 and 15, all cases referred to in the Second Schedule to the Business Rules shall be either brought before the Council of Ministers or to be circulated to the ministers for opinion. Rule 22(a) enjoins that "except as otherwise provided by any other rule, cases shall ordinarily be disposed of by order the authority of the Minister in-charge who may by means of standing orders give such directions" for the disposal of cases in the department. Sub-rule (1) of Rule 32 says that the following cases, among others, shall be submitted to the Chief Minister through the Minister in-charge before issue of orders:

"(vi). Cases involving questions of policy which affect or are likely to affect the interests of any minority community, Scheduled Castes, Scheduled Tribes and Backward Classes.

(xliv) Any other cases or class of cases which the Chief Minister specially directs to be submitted to him."

15. What needs to be noticed at the threshold stage is that no finding was recorded by the learned Judge that none of the persons appointed under the two impugned G.Os., possessed the requisite qualifications. Although the writ petitioners alleged that none of the appellants herein was qualified to be appointed to the Wakf Board u/s 11, no material whatsoever was placed before the learned single judge or before us in support of their assertion. The Government, evidently, wanted to show to the Court that all the members appointed fulfilled the statutory requirements and that is the reason why, we are inclined to think, the Government sought complete information regarding the bio-data of all the members by asking in Wakf Board Secretary to request them to furnish the same for the purpose of transmission to the Government pleader so as to effectively present the case of the Government. Awareness as to eligibility for appointment is one thing and keeping a statement containing the bio-data for the purpose of scrutiny by the Court when the appointment is challenged, is a different thing. It is enough if the Government is aware of the eligibility of the persons it chose to appoint and there is no need to have a detailed bio-data of each of the persons concerned. When appointments of this nature are made, there is no requirement that comparative merits of all the available persons should be considered and the best amongst them only should be chosen. It is not possible to have any guidelines in this regard and that is the reason why the statute, advisedly, mentions only different categories of persons who should fill the membership. Inviting applications, processing and short-listing the same for the purpose of choosing the best, is not contemplated by Section 11. We must also take note of the fact that when appointments are made to bodies like the Wakf Board, the Government naturally has to satisfy many sections amongst the classes eligible for appointment and no judicial scrutiny is either permissible or desirable to ascertain who, among the rival claimants, deserves the office most. The fact that all the persons appointed under the G.Os., impugned in the Writ petition fulfilled the statutory requirements of Section 11 itself affords sufficient evidence in proof of the assertion made on behalf of the appellants that the Government was fully aware of their eligibility. Further, the categorical statement in the counter-affidavit filed by the Deputy Secretary on behalf of the State Government that the Government "have appointed the members keeping in view the guidelines given under sub-sections (a) to (d) of Section 11 of the Act" dispels, in the absence of a reply affidavit denying this assertion, any doubts concerning the validity of the appointments. The letter of the Secretary of the Wakf Board dated 12-9-1994 addressed to the Secretary to the Government, Minorities Welfare Department requesting for bio-data "all the categories in which the members have been selected by the Government" was only for the purpose of enabling "the Board's standing counsel to represent the matter effectively". The reply of the Secretary to the Government on 13-9-1994 asking the Wakf Board's Secretary "get the bio-data information immediately from the members and Chairman of the Wakf Board and furnish the same to the standing counsel to represent the matter in the High Court under intimation to this Department" furnishes absolutely no basis, even remotely, to draw the inference that when

the appointment were made, the Government was not aware of the eligibility of the members u/s 11. It may be that the "details about their bio-data", as stated by the learned Judge, "were not available with the Government" but that would not be a vitiating factor, in our view, as already stated supra.

16. We now come to the second aspect concerning the validity of the impugned action whether it is in violation the Business Rules made for the convenient transaction of Government business. After the advent of the Constitution, in the initial stages, there was a mis-conception that the Business Rules were confidential in nature. As these Rules were made pursuant to a provision in the constitution for transacting Government business, whenever a question arose whether a particular action was in breach of the Business Rules or not, the Constitutional Courts used to summon the Rules for adjudicating the question. This was found to be rather inconvenient for the Government and so with a view to maintaining the confidentiality of Government business, Articles 77 and 166 were amended by the 42nd Constitution Amendment by adding the following as clause (4) to both the Articles:

"No Court or other authority shall be entitled to require the production of any rules made under clause (3) for the more convenient transaction of the business of the Government..."

It was felt that the above amendment to Articles 77 and 166 was a stumbling block for the Constitutional Courts to exercise the power of judicial review and, therefore, the same were repealed by the 44th Amendment to the Constitution, See: H. M. Seervai --Constitutional Law of India -- 3rd Edn., pp. 992-993. It is therefore, not open to any one to say that the Business Rules are confidential and the Courts are not entitled to test the validity of any impugned action with reference to the Business Rules.

17. Our Constitution embodies a Parliamentary or Cabinet system of Government of the British model both for the Union and the States is a well known fact. *Samsher Singh Vs. State of Punjab and Another*, (Per Ray, C.J.). The President or the Governor exercises his powers and functions on the aid and advice of the Council of Ministers except in very limited sphere, See: *Samsher Singh v. State of Punjab* (per V. R. Krishna Iyer at Pp. 2222-2223). In England, the Prime Minister is "the key-stone of the Cabinet arch". As head of the Cabinet, the Prime Minister was considered at one time to be "primus inter pares" and occupied a position which, so long as it lasted was one of exceptional and peculiar authority. See: Ivor Jennings --Cabinet Government p. 179 The English Constitution does not provide for Business Rules. But in India Government business, both at the Union and the State level, must be transacted in accordance with the Business Rules. In England, the authority of the Prime Minister to override a colleague's decision was never in doubt. He would do it if he could be sure of obtaining the support from the majority members of his party See: Ivor Jennings -- Op. Cit., p. 224. It is a historical fact that the office of Prime Minister has become so powerful in the recent times that in England, "collective cabinet responsibility,

however, is still maintained and enforced even though many decisions have been taken above the heads of cabinet members and without their knowledge. The upshot of this process is that the cabinet has now joined "the dignified elements of the Constitution", although its decline has been concealed from the public eye". See: Bill Coxall and Lynton Robins -- Contemporary British Politics --An Introduction, 1989 Edn. Pp. 129-130. Cabinet Government, thus, has been replaced by a Prime-ministerial Government.

18. Whatever be the position of the Prime Minister in England, the head of the Government in our country, either at the Union level or at the State level, cannot exercise powers not vested in him. He is bound to act in accordance with the Constitution and the laws. The Business Rules are intended to be adhered to; they are not mere formal rules made under Articles 77(3) and 166(3) of the Constitution without any sanctity or enforceability. The constitutional objective is Government business should be transacted in accordance with the Business Rules. Every minister and the Chief Minister must conform to them in the exercise of their powers" and discharge of functions, Decisional law, stretching over a period of four decades, has firmly settled this legal position.

19. Section 11(1) of the Preventive Detention Act, 1950, confers power on the Government to pass an order of confirmation of detention but it does not prescribe the form in which the executive action should be taken. In Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, , one of the contentions urged was that a departmental communication from the Home Department to the District Magistrate confirming the order of detention was not valid since it was not expressed to be made in the name of the Governor as required by Article 166(1) of the Constitution. Rejecting the contention, it was held by S. R. Das, J. (as he then was):

"..... the requirements of the Act will be fully satisfied if it can be shown that the executive decision has in fact been taken..... every executive decision need not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or forbear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated, it should normally be expressed in the form mentioned in Article 166(1) i.e., in the name of the Governor."

Pointing out the test for determining whether the requirements of a provision are mandatory or directory, the learned Judge opined :

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done".

Testing the issue from the above angle, the learned Judge concluded:

"Article 166 directs all executive actions to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not u/s 11(1). That such a decision has been in fact taken by the appropriate Government is amply proved on the record."

B.K. Mukherjea, J., (as he then was) in his separate but concurring opinion, while stating that Article 166 should be read as a whole, observed:

"Under Cl. (3), the Government is to make rule for the more convenient transaction of such business and for allocation of the same among the Ministers in so far as it does not relate to matters in regard to which the Governor is required to act in his discretion. It is in accordance with these rules that business has to be transacted."

The order could be challenged as violative of Article 166 "in any Court of law even on the ground that it was not made by the Governor of the State and in case of such challenge, the onus would be upon the State authorities to show affirmatively that the order was in fact made by the Governor in accordance with the rules framed under Article 166 of the Constitution." The law expounded by the Constitution Bench of the Supreme Court in *Dattatraya* (supra) was followed in all subsequent decisions.

20. In *P. Joseph John Vs. The State of Travancore-Cochin*, a decision rendered by a seven Judge Bench of the Supreme Court, one of the contentions advanced was that the show cause notice issued by the Chief Secretary on behalf of the Government calling upon the charged officer to show cause why action should not be taken against him in respect of certain charges proved in the departmental enquiry was not in accordance with the requirements of Article 166 since the "notice was not expressed to have been made in the name of the Raj Pramukh of Travancore and Cochin." Relying upon *Dattatraya* (supra), the Constitution Bench speaking through Mahajan, C.J., rejected the contention after having found that the notice signed by the Chief Secretary was on behalf of the Government. It was held:

"..... there can be no manner of doubt that the notice signed by the Chief Secretary of the State and expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against the action proposed to be taken against him was substantial compliance with the provisions of the article."

21. Under Rule 28(1) of the Punjab Business Rules, certain classes of cases including cases raising questions of policy and administrative importance are required to be submitted to the Chief Minister before the issue of orders. The rule

did not lay down that (he submission of the case should be through the concerned minister. One of the questions for consideration before the Constitution Bench of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, was whether the Chief Minister could call for a file after the minister passed an order on that regarding the punishment to be imposed upon an officer found guilty of tampering the official records and pass a different order. The order of the minister was that it would be a sufficient punishment if the officer was reverted to his original post but the Chief Minister thought that the punishment of dismissal was a proper one. Mudholkar, J., who wrote the opinion of the Constitution Bench said, the question whether in respect of grave charges held proved, an officer should be removed from service or merely reduced in rank "unquestionably raises a question of policy which would affect many cases and all the departments of the State. The Chief Minister would, therefore, have been within his rights to call up the file of his own accord and pass orders thereon. Of course, the rule does not say that the Chief Minister would be entitled to pass orders but when it says that he is entitled to call for the file before the issue of orders, it clearly implies that he has a right to interfere and make such orders as he thinks appropriate.

22. In *R. Chitralekha and Another Vs. State of Mysore and Others*, , Subba Rao, J., (as he then was) speaking for the majority, citing the opinion of Das, J., in *Dattatraya* (supra) observed:

"It is, therefore, settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor".

One of the questions that fell for consideration in *Chitralekha* (supra) was whether a letter signed by an Under Secretary to the Government, Education Department, specifying the number of marks for the interview of the candidates seeking admission to Engineering Colleges was in accordance with Article 166 of the Constitution. It was held by the Supreme Court that as there was no specific averment that no such order was issued by the Government, it could not be invalidated especially in view of the counter filed by the State Government that the direction as contained in the letter written by the Under Secretary was issued by the State Government.

23. In *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, , two Notifications u/s 4(1) and Section 6 of the Land Acquisition Act signed by the Under Secretary to the Government were challenged, inter alia, on the ground of non-compliance with the provisions of Article 166 of the Constitution. Laying down the test "whether any one at all formed an opinion and if he did, whether he had the necessary authority to do so", the Supreme Court found that the Under Secretary had the authority to sign the notifications on behalf of the Government and, therefore, the contention was negated.

24. Explaining the concept of "Cabinet responsibility", another Constitution Bench of the Supreme Court in *A. Sanjeevi Naidu, etc. Vs. State of Madras and Another*, said at page 1106:

"Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty, the Constitution has authorised the Governor under sub-Article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government..... The cabinet is responsible to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the Governmental functions. Similarly, an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility."

25. Non-compliance of the Business Rules vitiates the executive action. Rule 10(1) of the Bihar Business Rules enjoined prior consultation with the Finance Minister in respect of grant of lease of Government land of the value of more than Rs. 50,000/-. When a lease was granted in breach of this rule by private negotiations, the same was held to be invalid by the Surpeme Court in *Haridwar Singh Vs. Bagun Sumbrui and Others*, following the *Dattatraya* (supra) precedent. The same view was reiterated by the Supreme Court in *The State of Rajasthan Vs. A.K. Datta*, .

26. The statement of law enunciated by the Supreme Court in *A. Sanjeevi* (supra) was approvingly referred to by Krishna Iyer, J., in his separate but concurring judgment in *Samsher Singh* (supra), *Samsher Singh v. State of Punjab* at page 2222-2223.

27. On a scrutiny of the binding precedents referred to supra, we are of the considered opinion that the Business Rules framed under Article 166(3) of the Constitution are intended to be acted upon. They are not formal rules, the breach of which entails no consequences at all. Adherence to these rules substantially minimises unfairness and also unintended injury or deprivation. Public law compels adherence to the prescribed procedure, the violation of which vitiates the action. To strengthen the concept of "ministerial responsibility" and avoid undermining the confidence of the public in the functioning of the cabinet system of Government and to promote good governance, the business of the Government should be transacted in accordance with the rules framed under Article 166(3). Any action founded upon the allegation of breach of Business Rules gives rise to a valid justiciable cause of action enabling the Constitutional Courts to exercise their supervisory jurisdiction by way of judicial review. Despite

the fact that a presumption of constitutionality is implied under the Rules of Business, that presumption is a rebuttable one. See: *Samsher Singh v. State of Punjab* (supra) (per Ray, C.J., at p. 2200). The rules are not mandatory only in the sense that any breach of the same in procedural aspects would not result in the impugned action being set aside but at the same time, when a challenge was made that the Rules of Business were not adhered to, the State must establish to the satisfaction of the Court by producing the record that the action complained of was taken in accordance with the rules made under Article 166(3) of the Constitution. This is the only correct interpretation of the directory nature of the rules of Business; formal lapses are curable but not substantive departure from the prescribed procedure. Who passed the order is not the question but the question must be whether the one who had taken the decision was authorised to do so under the Business Rules ? If the answer is in the affirmative, the challenge must fail but if it is otherwise, the order impugned must be set aside.

28. In the light of this legal position, we have to examine what was the fact situation when the Chief Minister passed the order in question appointing the appellants herein as members of the Wakf Board. The concerned minister in charge of matters pertaining to the Wakf Board was the Minister for Minorities Welfare.

29. Since August, 1991, the Wakf Board was under supersession and the period was being extended from time to time. On 27-6-1994, the Wakf Board Secretary addressed a letter to the State Government requesting that the period of supersession may be extended for one more year beyond 16-7-1994 and also continue the Special Officer (vide p. 1 of the file produced by the Government). After considering that request, an order was issued by the State Government in G.O.Ms. No. 35 dated 19-7-1994 in exercise of the powers conferred by sub-section (3)(a) of Section 64 extending the period of supersession for six months beyond 16-7-1994 or till the need ceases "whichever is earlier". In two cases, the High Court of Andhra Pradesh expressed the view that there should be separate wakf Boards for Shias and Sunnis in the State and the State Government carried the matter in appeal to the Supreme Court. It appears that the Supreme Court stayed the operation of the orders of the High Court. When a note was put up to the minister concerned bringing to his notice this aspect, the minister endorsed that a composite Board may be constituted and a Special Officer may be appointed for a further period of six months beyond 16-7-1994 and thereafter, the "file may be circulated for constitutioning the Board". Accordingly, a Special Officer was appointed by G.O.Ms. No. 36 dated 19-7-1994. Thereafter, the private secretary to the minister addressed a letter to the Secretary to the Government in the Department of Minority Welfare stating:

"Hon"ble Chief Minister desired that the file relating to the constitution of State Wakf Board (as conveyed by the Secretary to the Chief Minister) shall be circulated to him at once. Hence the connected file may please be circulated to Minister for Minority Welfare before today evening i.e., 23-7-1994 as desired by

Minister for Minority Welfare."

30. One other aspect in the chain of events that must not be lost sight of is that one more writ petition -- W.P. No. 13647 of 1994 was filed contending that the State Government should not constitute a composite Board. An interim order was granted in that writ petition in W.P.M.P. No. 16685 of 1994 for a period of four weeks and that period expired on 12-8-1994. On 25-8-1994 Sri Anantha Reddy, Advocate, who appeared for the petitioner in W.P. No. 13647 of 1994 filed a letter before the Chief Secretary to the State Government with a copy marked to the Secretary, Minority Welfare bringing to their notice that the said writ petition was dismissed as withdrawn by the High Court at 2.15 p.m., on that day. The dismissal of the above writ petition enabled the Government to make appointments to the Wakf Board as no legal impediment was there any longer. On 9-8-1994, even before the writ petition was withdrawn, the minister for Wakfs noted in the file; "time is now ripe to constitute the State Wakf Board. A composite Board may be constituted. Chief Minister may kindly take a view". After perusing the file and considering the situation, a conscious decision was taken by the minister that a composite Board should be constituted and he accordingly wanted the Chief Minister to take a view. Thereafter, the Chief Minister passed orders appointing the eleven appellants herein as members of the Wakf Board.

31. From the facts stated above, which are culled out by us from a thorough scrutiny of the record placed before us, it is abundantly clear that the Business Rules had not been in any manner breached when the decision was taken to appoint the appellants herein as members of the Wakf Board. As required under Rule 32(1) of the Business Rules, the file was submitted to the Chief Minister "through the minister incharge". It is thus clear that the principal basis of the case sought to be built up by the respondents-writ petitioners lacks factual foundation.

32. The question concerned related to a policy decision affecting the interests of a minority community and all cases relatable to this aspect must, under Rule 32(1)(vi), be submitted to the Chief Minister through the minister concerned for issue of orders. Con-stitution of Wakf Board is undoubtedly a matter affecting the interests of minority community and, therefore, a decision was required to be taken by the Chief Minister. Even otherwise, as per Rule 32(I)(xliv) other cases or class of cases which the Chief Minister specially directs to be submitted to him must reach him through the minister in charge. It is true that while sending the file, the minister has not expressed any opinion as to who should be appointed as members of the Wakf Board but as matter of policy, he indicated that the Board should be a composite one. Why the minister has not suggested any names or what would have been the effect if he had suggested certain names or whether any names were orally suggested by him to the Chief Minister are all matters beyond the realm of judicial enquiry. If a question were to arise in a situation like this as to who would be responsible to the legislature, it might be

said that the responsibility is that of the cabinet as the decision was taken by the Chief Minister, the head of the Council of Ministers.

33. Any further debate in this regard would only lead us to academic realms unconnected with the questions under consideration.

34. For these reasons, upholding the G.Os., impugned in the two writ petitions we allow Writ Appeals Nos. 401 and 1087 of 1995 setting aside the common judgment of the learned Judge in W.P. Nos. 16111 and 16122 of 1994 and dismiss the writ petitions, in consequence of which, all the appellants in W.A. Nos. 401 and 1087 of 1995 will be entitled to function as members of the Wakf Board as per the above two G.Os. No costs.

35. As regards respondent No. 8 in W.P. No. 16111 of 1994 (appellant in W.A. No. 576 of 1995) -- Mohd. Shakir, MLA -- we are inclined to think that his appointment was conterminus with his membership of the State Legislature. The object of Section 11 of the Act is to enable the State Government to consider persons belonging to the four categories specified in clauses (a) to (d). The tenure of five years prescribed in Section 12 applies to persons covered by clauses (b) to (d) of Section 11 but as regards members of the State legislature and Parliament covered by clause (a), their continuance for five years is dependant upon their membership of the State legislature or Parliament as the case may be; their appointment was qua the membership of the State legislature or Parliament and when membership in that behalf ceases, they cannot continue as members of the Wakf Board. In other words, when an M.L.A., or M.P. is appointed as member of the Wakf Board, his tenure is conterminus with the membership in the State legislature or Parliament. As the appellant in W.A. No. 576 of 1995 is no longer a member of the State legislature, he cannot continue as member of the State Wakf Board notwithstanding this judgment upholding the legality of the two G.Os., impugned in the two writ petitions. Whether he is otherwise eligible for appointment under clauses (b) to (d) of Section 11 and if so whether the Government should consider his claims for membership are outside the purview of this judgment and so we do not want to express any opinion in this regard. W.A. No. 576 of 1995 is accordingly dismissed. No costs.

36. Order accordingly.