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**(2014) 01 AP CK 0124**  
**In the Andhra Pradesh High Court**  
**Case No : C.R.P. No. 5057 of 2008**

Zaheer Ahmed Khan

APPELLANT

Vs

M.A. Gaffor, Chief Executive Officer and Others

RESPONDENT

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**Date of Decision :** 23-01-2014

**Acts Referred:**

Constitution of India, 1950 — Article 136 21 227  
Evidence Act, 1872 — Section 114

**Citation :** (2014) 3 ALD 51 : (2014) 2 ALT 68

**Hon'ble Judges :** M.S. Ramachandra Rao, J

**Bench :** Single Bench

**Advocate :** Gangaiah Naidu, for Sri N. Bharat Babu, for the Appellant; M. Mehdi Hussain, Sri Mir Masood Khan and Sri Syed Shareef Ahmed, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.S. Ramachandra Rao, J.—This Revision is filed u/s 83(9) of the Wakf Act, 1995 (for short, "the Act") challenging the order dt. 16.06.2008 in Appeal No. 1 of 2005 of the A.P. Wakf Tribunal, Hyderabad (for short "the Tribunal"). The petitioner herein is the son of one Mir Gulam Ali Khan. The latter was a Muthawali of Dargah Kohe - Moula Ali (for short, "the institution"), a Sunni Wakf published and notified in the A.P. Gazette No. 35 Part-II dt. 27.08.1987. It owned an extent of Acs.232.00 at Malkajgiri Village and Mallapur Village of Ranga Reddy District out of which an extent of Acs.71.00 is not under cultivation. Mir Gulam Ali Khan died on 22.05.1988.

2. Thereafter, the 1st respondent-Wakf Board (for short, "the Board") constituted a Committee to manage the affairs of the said institution. On 07.10.1992, the petitioner made an application to declare him as a Muthawali of the said Wakf. The then Special Officer of the Board appointed the petitioner as a temporary Muthawali of the said institution in the place of his deceased father and directed him to manage the affairs of the institution in accordance with the Act.

3. One individual by name Nawazuddin lodged a complaint with the Board that

the lands of the institution were alienated by the petitioner's agents, that he failed to submit statement of accounts, budget, audited accounts to the Wakf Board even though it is his statutory obligation to do so under Sections 32, 31 and 33 of the Act and he had also not paid Wakf Fund on the properties attached to the institution for several years.

4. By proceedings F. No. M1/RR/57/92 dt. 26.11.1993, the Special Officer of the Wakf Board, without conducting any enquiry into the allegations, terminated the services of the petitioner as temporary Muthawali and directed him to hand over charge to one Ahmed Moinuddin, who was appointed as a Receiver by him for the above institution.

5. This was challenged by petitioner in W.P. No. 17879 of 1993 in this Court. By order dt. 29.11.1993, in WPMP. No. 22589 of 1993 in the said writ petition, this Court granted interim direction that the petitioner be allowed to maintain and take care of the Dargah/Institution but he shall not deal with any moveable or immoveable properties pertaining to it, pending further orders. The said Writ Petition was allowed on 06.12.1999 by this Court. It held that under Sub-section (4) of Section 43 of the Act, removal of Muthawali can only be made after an enquiry into the matter in the prescribed manner and a decision is taken by a majority of not less than 2/3rd of the members of the Board, that such an enquiry has not been done while passing the impugned order against the petitioner, and therefore, it cannot be sustained. It held that it is open to the Board to conduct such an enquiry but till it is done, the petitioner shall not deal with the moveable and immoveable property of the institution.

6. Thereafter, on 14.03.2000, a charge memo containing the charges made against him in the complaint dt. 16.11.1993 referred to supra was issued to the petitioner and an enquiry officer by name Md. Rabbani was appointed as enquiry officer. He submitted a report dt. 28.04.2000 holding that the petitioner is not guilty of any of the charges. This was placed before the Board in its meeting held on 10.05.2000. It considered the report and the entire material on record and passed a unanimous resolution accepting the report dt. 28.04.2000 of the enquiry officer and consequently reinstated him as Muthawali of the institution subject to the condition that he should get the accounts of all previous years audited within one month through the Chief Inspector Auditor Wakfs and report compliance. Thereafter, the Chief Executive Officer of the Wakf Board issued proceedings dt. 25.05.2000 cancelling the order dt. 26.11.1993 by which the temporary Muthawaliship of the petitioner was terminated. This decision of the Wakf Board was also published in the Andhra Pradesh Gazette dt. 22.06.2000.

7. Thereafter, another complaint was made against the petitioner by Md. Nawazuddin, claiming to be Secretary, A.P. Minority Organization, Hyderabad to the Chairman, Minorities Commission contending that petitioner's suspension was revoked on payment of illegal gratification of Rs. 20 lakhs to the Chairman and Members of the Wakf Board; that after re-induction into service, the petitioner had again started illegal sale transactions of Wakf lands with the

support of the land grabbers especially in S. Nos. 339 and 442 which are situated on the eastern side of the PWD road; that he got released Gholak amount of Rs. 16 lakhs in his favour; that he had sold the other lands to non-Muslims and they have also constructed marriage halls, houses and temples, etc. on the Wakf lands; and that he sold Acs.700.00 of agricultural land worth Rs. 200 crores on massive scale and constructions had also been made on these lands illegally.

8. After receipt of this complaint, the Chief Executive Officer of the Wakf Board appointed one Ahmed Khan as enquiry officer to conduct enquiry into the above allegations through its order dt. 12.09.2001.

9. He framed the following charges against the petitioner:

(i) That Sri Zaheeruddin Khan was suspended in 1993 for committing the acts of illegal sale of Wakf lands attached to Dargah.

(ii) That during the period of Mr. Syed Yousuf Ali Ex. Chairman APSWB he was re-appointed as Muthawali by the Towliath Committee by accepting Rs. 20 lakh as bribe as detailed below.

1. Sri Syed Yousuf Ali, Chair person Rs. 10.50 lakhs
2. Sri Safiullah, Board Member Rs. 5.00 lakhs
3. Sri Syed Sabir Hussain Abidi, Board Member Rs. 2.50 lakhs
4. Sri Syed Ghouse Mohiuddin, Board Member Rs. 2.00 lakhs
5. Sri S.S. Iqbal Razvi, CEO Rs. 3.00 lakhs
6. Mr. Rabbani, Ex-law Officer APSWB Rs. 1.00 lakhs
7. Standing Counsel of High Court Rs. 2.00 lakhs

(iii) That after his re-appointment, he got released the Gholak amount of Rs. 16.00 in his favour.

(iv) That after his appointment again he started illegal sale of the lands attached to the Wakf Institution especially lands bearing Sy. Nos. 339 and 422 which are situated on eastern side of Hill. He has sold the lands to non-Muslims who have constructed residential houses, Temples and marriage Halls etc.

(v) That he has illegally sold Wakf land about 700 acres worth of about Rs. 200 crores.

(vi) During enquiry it is stated that the Accounts were not maintained during his tenure in 1993, he did not submit budget statement nor paid Wakf Fund. He did not maintain Accounts nor Audited. He misused the funds.

(vii) He committed misfeasance and malfeasance.

(viii) He failed to discharge his duties as Muthawali and protect the Wakf property.

10. This was challenged by the petitioner in W.P. No. 3287 of 2002 on the ground that the Chief Executive Officer had no jurisdiction to appoint an enquiry officer against the petitioner, as during that relevant period, there was no Wakf Board and in the absence of any authority either from the Government or from other source, an enquiry u/s 71 of the Act cannot be initiated by appointing Ahmed Khan as enquiry officer. Initially, interim stay of conduct of enquiry was granted but it was later vacated on 20.06.2002. This was challenged in WA. No. 1103 of 2002 by the petitioner. This WA was heard along with W.P. No. 3287 of 2002. By an order dt. 18.07.2002, the Writ Petition was allowed and consequently the Writ Appeal was closed. The Division Bench held that the Chief Executive Officer of the Wakf Board was not authorized to take recourse to Sections 70 and 71 of the Act and initiate proceedings against the petitioner. It also noted that a competent Board had been constituted in the meanwhile and it would be open to such a Board, if it so desires, to take appropriate action against the petitioner.

11. Thereafter, vide resolution No. 655 of 2002 dt. 21.12.2002, the Board resolved unanimously to suspend the petitioner for ten days and directed the petitioner to show-cause as to why the suspension period shall not be continued till the conclusion of the pending enquiry as per Section 64 of the Act. It also resolved that the institution would be taken under the direct management of the Board. By proceedings dt. 10.02.2003, one M.A. Hafeez Siddiqui was appointed as an enquiry officer to enquire into the allegations against petitioner.

12. Although he examined some witnesses, he relied on the report dt. 29.01.2002 of Ahmed Khan, the previous enquiry officer. In that report Ahmed Khan had stated that he visited the spot along with surveyors of the Board on 18.01.2002 and 23.01.2002 and inspected the lands in Sy. No. 422; that he was informed by the local people that a portion of the land was allotted by Revenue Authorities for house-site purpose and the remaining area is under illegal encroachment; that his discreet enquiry revealed that the petitioner had sold the land to them on the promise that they will not reveal his name; the purchasers also constructed pucca houses in the said land; that Sy. No. 435, 436 is also under encroachment of one Narayan Murthy informed that the land was leased out to him; that in Sy. Nos. 739, 432 and 431, one Sri Rama Dev constructed a function hall illegally on an area of about Ac.2 and that Acs.10.00 of land attached to the function hall is available; that lay-out plans of the Wakf lands bearing Sy. Nos. 443, 444 have been prepared and the said land is being sold out by making plots; that the entire Wakf land is under illegal possession of others but the petitioner had not taken timely action to evict them causing heavy loss to the Board. Ahmed Khan had also noted that the petitioner did not fix lease amount in order to increase the income of the Board and that he had not discharged his duty honestly and for the benefit of the Board; that Xerox copies of sale deeds relating to Sy. Nos. 422 and 433 which were executed by Zaheer Khan in favour of K. Asu and others were produced on the spot by the purchasers; that the Wakf lands are being sold by making lay-out plans for Sy. Nos. 422, 433, 444, 436, 437, 435, 430 and 433 and he is of the opinion that

the land might have been sold by the Muthawali.

13. M.A. Hafeez Siddiqui, the enquiry officer, in his report dt. 15.1.2005 held that charges (iv), (v), (vi) and (viii) are proved against the petitioner. He held that certain sale deeds produced before him in the enquiry were executed in 1998 and 1999 when the petitioner was functioning as Muthawali and rejected the contention of the petitioner that he did not execute the said sale deeds and they were executed when the management of the institution was under the control of the Wakf Board. He further held that the sale deeds were executed in respect of Wakf lands by a close relative of the petitioner in the presence of the petitioner and he cannot escape the sale transactions merely because he is not the vendor and that the petitioner intentionally did not file suits against those persons in whose favour the sale deeds are executed; and although he filed 54 cases against unauthorized occupants, possession of the land was not recovered even in a single case and he had not made the Wakf Board as a party in these cases. He also held that he did not produce the ledgers and cash books for the period he rendered service as Muthawali and therefore it has to be inferred that he misutilized the Wakf funds.

14. Basing on this enquiry report, the Chief Executive Officer of the Wakf Board held that the petitioner sold service Inam lands attached to the subject institution and neglected/failed to protect Wakf properties, that he did not maintain accounts and misused the funds, and that he failed to discharge his legitimate duties as contemplated under the Wakf Act, 1995. He therefore held that u/s 64(g)(h)(k) of the said Act his services are terminated and accordingly passed an order No. JC/RR/2000/B2 dt. 19.02.2005.

15. This was challenged by the petitioner in AS. No. 1 of 2005 before the Wakf Tribunal. The petitioner contended that under the Act only the Board is the competent authority to remove a Muthawali and in the absence of a Board, the Special Officer of the Board had to take a decision as required u/s 64(3) of the Act; that the Chief Executive Officer was not at all empowered to take any decision of removal of Muthawali u/s 64(3) of the Act; that there is a reference to the order of the Special Officer dt. 14.02.2005 but such order is not available in file and the Wakf Board did not file copy of the said order; page. 49 of the note file reveals that the Section Officer made a note dt. 11.02.2004 seeking approval of the recommendation of the enquiry officer to terminate the petitioner's services and the Special Officer merely signed below the note; that the Special Officer had neither approved nor disapproved of the said recommendation; and therefore, the procedure u/s 64(3) of the Act was not followed.

16. By order dt. 21.08.2006, the said appeal was allowed by the Tribunal. It held that had there been Board consisting of members and Chairperson, they could have discussed and taken a decision by passing a resolution; the endorsement made by the Special Officer at page 49 did not show that he has taken any decision in the matter; the Special Officer ought to have taken a decision giving reasons after perusing the material available on record; page 565 of the note file

(1st page of the enquiry report) reveals that the Chief Executive Officer of the Board had made up his mind to remove the petitioner from the post of Muthawalli. It held that the order of termination is not in accordance with Section 64(3) of the Act. The other points raised by the petitioner were not considered by it.

17. This order was challenged by one Minorities Organization represented by its Secretary, Ali Sarwan, one Yakeeb Hussain Khaizer and one Ahmed Hussain Haider in CRP. No. 4665 of 2006. By order dt. 10.11.2006, the said Revision was allowed by this Court. This Court took note of the submission of the counsel for petitioner that the appeal be considered on merits and not just on the issue relating to Section 64(3) of the Act. It therefore set aside the impugned order and remanded the matter back to the Tribunal to decide it on merits.

18. After remand, the Tribunal passed orders on 16.06.2008 dismissing AS. No. 1 of 2005. It held that the institution of the enquiry against the petitioner and appointment of enquiry officer to conduct enquiry is justified; that the enquiry was not conducted behind the back of the petitioner; that there was nothing wrong in MA. Hafeez Siddiqui, the 2nd enquiry officer, relying on the report of the spot inspection and material gathered by Mr. Ahmed Khan, the 1st enquiry officer; that registered documents No. 3196/98 dt. 09.06.1998, No. 689/98 dt. 05.02.1998, No. 4293/98 dt. 01.07.1998 and No. 4454/99 and 4552/99 dt. 08.10.1999 were signed by one Zaheer Ali Khan/Zaheer Khan as witness; that the petitioner, even if he did not sign the documents, had indulged in negotiations for sale of notified Wakf land; that on physical verification, it was found that there was hardly any land left; therefore, the petitioner had indulged in the sale of the Wakf lands and did not take any steps to safeguard the Wakf property; that he did not furnish accounts or pay Wakf fund; even though QMA Rabbani had submitted a report in favour of the petitioner, pursuant to which he was appointed as regular Muthawalli vide proceeding dt. 25-05-2000, the manner how that enquiry was conducted and conclusion reached is not the subject matter of the appeal; that although the Special Officer ought to have given reasons or clearly stated that he had accepted or negated the enquiry report dt. 15.01.2005, even if he did not do so and simply subscribed his signature on 11.02.2004, the enquiry proceedings cannot be set aside since there is prima facie record to show the sale of Wakf land and its misuse and maladministration by the petitioner.

19. This is challenged in the present Revision by the petitioner.

20. Heard Sri P. Gangayya Naidu, learned counsel for the petitioner and Sri Meer Masood Khan, learned counsel for the Board.

21. On 21-11-2008, this Court in C.R.P.M.P. No. 6699 of 2008 in this Revision suspended the operation of the proceedings of the Board dt. 19-02-2005 removing the petitioner as Muthawalli of the institution, pending disposal of the Revision.

22. Alleging that the petitioner was not allowed to perform duties as Muthawalli of the institution in spite of the above orders of this Court and perform the birth day ceremony of the Hazrat from 07-07-2009 to 10-07-2009 inspite of his representations dt. 16-12-2008, 04-02-2009 and 25-06-2009 and this amounted to wilful disobedience of the orders of this Court, the petitioner filed Contempt Case No. 899 of 2009 in this Court. This Contempt Case is disposed of by a separate order.

23. The learned counsel for the petitioner contended that the order dt. 16-06-2008 passed by the Tribunal confirming the order dt. 19-02-2005 of the Chief Executive Officer of the Board removing the petitioner as Muthawalli of the institution is unsustainable; the report of M.A. Hafeez Siddiqui dt. 15-01-2005 on the basis of which the petitioner was removed from service cannot be accepted since he ignored the report of Md. Rabbani which exonerated the petitioner from the same charges and also because his findings are based on conjunctures and surmises without any evidence to prove that the petitioner is responsible for sale of lands of the institution; that the petitioner was reinstated as Muthawalli only on 25-05-2000 and had not been acting as Muthawalli prior thereto and the transactions relating to sale of properties of the institution relied upon by the Tribunal occurred prior to the year 2000 when he was not in management of the properties of the institution; in any event Zaheer Ali Khan/Zaheer Khan who is said to have attested the documents referred to by the Tribunal are different individuals as the petitioner's name is Zaheer Ahmed Khan; in any event once Md. Rabbani exonerated the petitioner, it was not open to the Board to conduct successive enquiries into the same allegations with a view to some how make out a case for the removal of the petitioner; it is shocking that the Tribunal should observe that even if the Special Officer (who simply subscribed his signature on 11-02-2004 below the note put up by the Section Officer, without accepting or negating the enquiry report dt. 15-01-2005 of M.A. Hafeez Siddiqui) did not give reasons or indicate his view about the recommendation of M.A. Hafeez Siddiqui in the said report, the impugned order need not be set aside; even the copy of the enquiry report dt. 15-01-2005 of M.A. Hafeez Siddiqui was not furnished to the petitioner and this violated the principles of natural justice; the enquiry officer as well as the Tribunal ought to have seen that the complainant had not made the complaint in the form of an affidavit as mandated by Section 70 and 71 of the Act r/w the Rules made thereunder and it should have been thrown out on the said ground itself; there is a violation of Section 64(3) of the Act; that when admittedly the institution had only Ac.232, it is absurd for the complainants to allege that petitioner sold Ac.700 and this shows the malicious nature of the complainants; and therefore the Revision be allowed. He relied upon the following decisions in support of his above contentions:

Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, , Sannepalli Nageswar Rao and Another Vs. District Collector, Khammam and Others, Govt. of Andhra Pradesh and another Vs. R.K. Ragala and

another, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and Union of India v. Mohd. Ramzan Khan (1979) 2 S.C.C. 468.

24. The learned counsel for 1st respondent-Board, on the other hand, contended that the order of the Tribunal is valid and supported by good reasons; that the order of removal passed by the Chief Executive Officer of the Board is valid; that it was done on the basis of the enquiry findings of enquiry officer M.A. Hafeez Siddiqui; there was nothing wrong in M.A. Hafeez Siddiqui, the enquiry officer relying on the findings made by Ahmed Khan, the previous enquiry officer; and that the Special officer has accepted the findings of the enquiry Officer on 11.2.2004 by subscribing his signature below the note put up by the Section Officer; and there is no necessity for him to give reasons for accepting the recommendation of the enquiry officer to remove the petitioner from service. He further contended that there is no prohibition in law to conduct repeated enquiries against a Muthawalli of a Wakf institution and the principles of Service law do not apply; there is no requirement in law for furnishing copy of the enquiry report to petitioner; that the misconduct of the petitioner is clear from the fact that in O.S. No. 110 of 1990 filed against him by one G.V.V.R.P. Varma and another for a perpetual injunction, petitioner set up title to the Wakf land. He further contended that the contention about non-filing of affidavit by the complainants and violation of Section 70 and 71 of the Act was not raised by petitioner before this Court in C.R.P. No. 4665 of 2006 and therefore it is not open to the petitioner to raise it in these proceedings on the ground of constructive res judicata. He cited Board of Muslim Wakfs, Om Prakash Mann Vs. Director of Education (BASIC) and Others, State of Maharashtra and Others Vs. Prabhu, , Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, Majlis-c-Shura Dasti Parcha Bafi Hermain Sharifain Wakf Committee Vs. A.P. Wakf Board, Hyderabad and others, Majlis-e-Shura Dasti Parcha Bafi Hermain Sharifain Wakf Committee v. A.P. Wakf Board, Hyderabad and Others AIR 2005 MP 220, K.P. Zainulabdeen and others Vs. Tamil Nadu Wakf Board, Madras and others, and K.R. Deb Vs. The Collector of Central Excise, Shillong,

25. I have noted the submissions of the counsel for the parties.

26. In my opinion, the following issues arise for consideration:

- a) Whether it was open to the Board to conduct successive enquiries into the allegations against the petitioner in respect of sale of service Inam lands of the institution etc. particularly when M.D. Rabbani in his report dt. 28-04-2000 exonerated him of these charges?
- b) Whether the absence of reasons by the Special Officer or indication by him about accepting or negating the enquiry report and recommendation of M.A. Hafeez Siddiqui to remove the petitioner as Mutawalli vitiates the order terminating the services of the petitioner?
- c) Whether the Chief Executive Officer of the Board is empowered to remove the



Muthawalli u/s 64(3) of the Act?

d) Whether non-furnishing of the enquiry report of M.A. Hafeez Siddiqui by the Board to the petitioner vitiates the order terminating him from service?

e) Whether it was proper for M.A. Hafeez Siddiqui to rely upon the findings made by the 1st enquiry officer Ahmed Khan? and

f) Whether order dt. 16-06-2008 of the Tribunal in A.S. No. 1 of 2005 confirming the order dt. 19-02-2005 of the Chief Executive Officer of the Board removing the petitioner as Muthawalli of the institution is sustainable?

Issue No. (a):

27. In *S.N. Mukherjee Vs. Union of India*, an enquiry was held against a Sub Inspector of Central Excise on a charge that he did not report the receipt of certain amount from a party in his seizure report. He was exonerated of the said charge as the person who was alleged to have given that amount to him did not attend the enquiry. Another enquiry was ordered by the competent authority against the said officer purporting to exercise power under Rule 15(4) of the CCS (CCA) Rules, 1967. The Supreme Court held:

12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

28. Similar view was expressed by a Division Bench of this Court in *Government of A.P. (supra)*. In that case successive enquiries were conducted into the caste status of the respondent to determine whether he was Scheduled Caste or not. This Court held that Article 21 of the Constitution of India guarantees a citizen to live with dignity and without being harassed by repeated enquiries provided the earlier enquiries were conducted in accordance with law. It found that in two previous enquiries by competent officials there was a finding that he belonged to Kondakapu, an S.C. community and those enquiries were validly conducted. It held that mere fact that some new evidence was gathered subsequently will not invalidate the earlier enquiries and the findings therein as the enquiries were

legally held and as the findings were based on evidence.

29. Although the counsel for the 1st respondent contended that principles of Service Law dealing with successive enquiries cannot be applied to the case of removal from service of Muthawalli of a Wakf institution under the provisions of the Act, I am unable to agree with the said contention. The principle laid down in the above decisions that successive enquiries are not to be allowed if the previous enquiries are properly held, is intended to prevent harassment of the official who is subjected to the enquiries, and to maintain his dignity guaranteed by Article 21 of the Constitution of India. Therefore there cannot be any objection for applying the said principle to the present case arising under the Wakf Act, 1995.

30. In the present case, admittedly the petitioner's services as a temporary Muthawalli were terminated without enquiry on 26-11-1993 initially on the ground that (i) he failed to protect the property of the institution and its interests and that his agents had sold lands of the institution; (ii) that he failed to submit statement of accounts, budget, audited accounts to the Board although he was statutorily obligated to do so under Sections 32, 31 and 33 of the Wakf Act, 1954 and (iii) he had not paid Wakf fund for several years. This was set aside by order dt. 06-12-1999 in W.P. No. 17879 of 1993 giving liberty to the Board to conduct enquiry into the allegations against him.

31. Thereafter, the Board appointed one Md. Rabbani as an enquiry officer and he framed three charges against the petitioner. After enquiry, he gave a report dt. 28-04-2000 holding that the petitioner is not a guilty of these charges. This report was placed before the Board on 10-05-2000. It accepted it and decided to allow him to function as Muthawalli of the Wakf institution subject to the condition that he should get the accounts of all previous years audited within one month through Chief Inspector Auditor of Wakfs and report compliance. On the basis of this decision, proceedings dt. 25-05-2000 were issued by the Chief Executive Officer of the Board cancelling the order dt. 26-11-1993 terminating his services. This was also published in the Andhra Pradesh Gazette dt. 22-06-2000. This is not disputed by the 1st respondent Board. The report of Md. Rabbani was not placed before this Court.

32. Although the counsel for 1st respondent Board contended that the charges which were subject matter of the enquiry by Md. Rabbani were different from the charges which were enquired into by M.A. Hafeez Siddiqui on the basis of which the services of the petitioner were terminated on 19-02-2005 by the Chief Executive Officer of the Board, since the report of Md. Rabbani was suppressed by the Board, an adverse inference u/s 114 of the Evidence Act, 1872 is drawn against the Board that if such report was produced by it, it would disprove its plea. So it has to be taken that what was enquired into by Md. Rabbani were the same charges (iv), (v), (vi) and (viii) set out in para 10 supra which had been enquired into by M.A. Hafeez Siddiqui.

33. One Nawazuddin, claiming to be Secretary of A.P. Minority Organization, made a complaint against the petitioner on 17-08-2001 to the Chairman, Minorities Commission alleging that the petitioner had paid money to the Ex-Chairman, three Board Members, Ex-Secretary, Ex-Law Officer and Standing Counsel for getting himself re-inducted as Muthawalli and making allegations set out in para 10 supra. On that basis one Ahmed Khan was appointed as enquiry officer by the Chief Executive Officer of the Board on 12-09-2001. This order was set aside by a Division Bench of this Court in its order dt. 18-07-2002 in W.A. No. 1103 of 2002 and W.P. No. 3287 of 2002 on the ground that a Chief Executive Officer was not competent to appoint an enquiry officer to enquire into allegations against a Muthawalli, that only the Board can do so and liberty was granted to the Board to take appropriate action against the petitioner.

34. Thereafter, the Board appointed M.A. Hafeez Siddiqui on 10-02-2003 to conduct enquiry against petitioner in respect of the charges set out in para 10 supra. However, in his report dt. 15-01-2005, he held that only allegations (iv), (v), (vi) and (viii) set out in para 10 supra are proved. Therefore, it follows that the allegations of bribes being paid by petitioner to the Ex-Chairman etc. in allegation (ii) are not proved.

35. The allegations (iv), (v), (vi) and (viii) set out in para 10 supra are the same allegations on the basis of which the petitioner's services as Mutawalli were first terminated on 26.11.1993 and which were enquired into by Md. Rabbani, enquiry officer in the year 2000. Therefore once allegation (ii) that petitioner bribed the ex-Chairman etc. of the Board, is not proved, it was not open to the enquiry officer MA Hafeez Siddiqui to enquire again into allegations (iv), (v), (vi) and (viii) and hold that they are proved. Such a successive enquiry into the same charges by M.A. Hafeez Siddiqui amounts to harassing the petitioner and violates Art. 21 of the Constitution of India. Therefore issue No. (i) is answered in favor of the petitioner and against the 1st respondent.

Issue No. (b):

36. There is no dispute that the Special Officer simply subscribed his signature on 11-02-2004 below the note put up by the Section Officer, without accepting or negating the enquiry report dt. 15-01-2005 of M.A. Hafeez Siddiqui as indicated by para 49 of the note file perused by the Tribunal before passing its order dt. 21-08-2006 in A.S. No. 1 of 2005. The Special Officer did not give reasons or indicate his view about the recommendation in the said report of M.A. Hafeez Siddiqui to remove the petitioner from service as Muthawali.

37. In the order dt. 21-08-2006 in A.S. No. 1 of 2005, the Tribunal held that the Board consisting of Members and Chairperson would have discussed and taken a decision whether or not to accept the recommendation of M.A. Hafeez Siddiqui in his report dt. 15-01-2005 to remove the petitioner; that in the absence of the Board, the Special Officer did not take any decision in the matter since he merely subscribed his signature on 11-02-2004 below the office note of the Section

Officer. It also held that he should have given reasons. It held that Section 64(3) of the Act was violated.

38. No doubt this order was later set aside by this Court in its order dt. 10-11-2006 in C.R.P. No. 4665 of 2006 at the instance of certain third parties on the ground that the other contentions raised on merits by petitioner were not considered by the Tribunal and the matter was remitted back to the Tribunal to decide the matter on merits.

39. Subsequent to the remand, strangely the Tribunal in its order dt. 16-06-2008 took a contrary view that although Special Officer should have given reasons stating whether he accepted or negated the enquiry report dt. 15-01-2005, still on this ground the proceedings imposing punishment of removal on the petitioner, cannot be set aside.

40. In my opinion, such a view is clearly unsustainable. To draw an analogy from Service Law jurisprudence, in a domestic enquiry against an employee, if the enquiry officer submits a report holding him guilty of misconduct alleged, the disciplinary authority has to consider whether or not to accept the said report by independently considering the reasoning and findings of the enquiry officer. Unless the disciplinary authority accepts the findings of the enquiry officer, a punishment cannot be imposed on the employee. In fact, the recommendation of the enquiry officer about the punishment to be imposed on the employee found guilty of misconduct in the enquiry, is not binding on the disciplinary authority. Moreover, the disciplinary authority, even if he accepts the conclusions in the enquiry report, he should impose a punishment which is not disproportionate to the misconduct found proved against the employee. This is settled law. In my opinion, principles of Service Law Jurisprudence to the extent not inconsistent with the provisions of the Act can be imported while deciding the validity of action taken by officials of the Board/Board against a Muthawali u/s 64 of the Act.

41. Since the Special Officer had not stated whether he accepted the report of the enquiry officer or not and also the recommendation as to the quantum of punishment, and since he is exercising the power of the Board in the absence of a duly constituted Board, he is also required to comply with Sub-section (3) of Section 64 of the Act. The said provision empowers the Board to remove a Muthawali on certain grounds specified in sub section (1) of Section 64 only if it had held an enquiry into the matter in a prescribed manner and has taken a "decision" by a majority of not less than 2/3rd of the members of the Board. Therefore it is necessary that there shall be a "decision" of the Special Officer on the above aspects. This "decision" should be supported by reasons.

42. The requirement of furnishing reasons has been held to be one of the important principles of natural justice by the Supreme Court in S.N. Mukherjee v. Union of India. In the said case, a Constitution Bench of the Supreme Court held:

35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that

of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

43. Therefore I am of the opinion that non-indication by Special Officer as to whether he accepted the findings of the enquiry officer or not, or the recommendation of the enquiry officer as to the quantum of punishment, and non-furnishing of reasons indicate non-application of mind by him to the issue as to whether the petitioner is guilty of the misconduct alleged against him and

whether the punishment of removal from service is the appropriate punishment to be imposed on him. The Tribunal in my opinion committed a serious error in not giving importance to this aspect and brushing aside the objections of the petitioner in this regard. Therefore its order as well as the order of the Chief Executive Officer of the Board dt. 19-02-2005 (which in turn is based on the Special Officer's signature below the Section Officer's note at page 49 of the note file) cannot be sustained. Issue (b) is answered accordingly in favour of the petitioner and against the 1st respondent Board.

Issue (c):

44. In the order dt. 18-07-2002 in W.A. No. 1103 of 2002 and W.P. No. 3287 of 2002 to which both the petitioner and the 1st respondent-Board are parties, a Division Bench of this Court held that a Chief Executive Officer of the Board, in the absence of a duly constituted Board, cannot appoint an enquiry officer to enquire into charges against a Muthawali and that only a competent Board can do so.

45. u/s 64 of the Act only the Board is empowered to remove a Muthawali from his office provided that he is found guilty of one of the enumerated misconducts in sub-section (1) of Section 64. There is no power conferred on the Chief Executive Officer by the Act to impose any order of punishment including the punishment of removal. The counsel for the 1st respondent-Board has not been able to place any proceeding/provision of law before this Court in support of his plea that the Chief Executive Officer of the Board was empowered to impose any punishment on a Muthawali and that exercising such a power, the petitioner was removed by the Chief Executive Officer of the Board in the order dt. 19-02-2005. Therefore, the said order of the Chief Executive Officer of the Board has to be held as one passed without jurisdiction and as such a nullity. Therefore, this point is answered in favour of the petitioner and against the 1st respondent.

Issue (d):

46. Under this issue it has to be decided whether non-furnishing of the enquiry copy report dt. 15-01-2005 of M.A. Hafeez Siddiqui to the petitioner vitiates the order of punishment dt. 19-02-2005 passed by the Chief Executive Officer of the Board.

47. I have already held that principles of Service Law Jurisprudence to the extent not inconsistent with the provisions of the Act can be applied to proceedings of the officials of the Board/Board removing Muthawali from service u/s 64 of the Act.

48. A Constitution Bench of the Supreme Court in Managing Director, ECIL (supra) has held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled

against him. It held that such a right is a part of the employee's right to defend himself against the charges levelled against him and a denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. It therefore held that the delinquent employee is entitled to a copy of the enquiry report even if the statutory rules do not permit the furnishing of the report or are silent on the subject and it should be furnished irrespective of the nature of punishment. It also held that failure on the part of the employee to ask for the report cannot be construed as a waiver of his right and that whether or not he asks for the report, it has to be furnished to him. It further held that the employee has a right to make representation to the disciplinary authority against the findings recorded in the enquiry report and this right is an integral part of the opportunity of defence against the charges. To deny such a right, the Court held, is a breach of principles of natural justice.

49. The plea of non-supply of enquiry copy report was specifically raised by the petitioner in the appeal before the Tribunal, but this point has not even been adverted to by the Tribunal. The petitioner was gravely prejudiced by non-supply of the enquiry report dt. 15-01-2005 of M.A. Hafeez Siddiqui and he was denied an opportunity to represent against the findings of the enquiry officer to the Board. In this view of the matter, there can be no doubt that there is a clear violation of principles of natural justice. Unfortunately the Tribunal erroneously held that there is no violation of principles of natural justice. In view of the above decision of the Supreme Court, this issue is answered in favour of the petitioner and against the 1st respondent-Board.

Issue (e):

50. In page 45 to 46 of his enquiry report dt. 15-01-2005, M.A. Hafeez Siddiqui referred to the spot inspection done on 18-01-2002 and 23-01-2000 by Sri Ahmed Khan and his interim report and the findings therein and relied on the said findings to come to the conclusion that the petitioner is guilty of the allegations (iv), (v), (vi) and (viii) mentioned in para-10 supra.

51. The Tribunal in the impugned order dt. 16-06-2008 in A.S. No. 1 of 2005 noticed that M.A. Hafeez Siddiqui, the subsequent enquiry officer, had believed the conduct of such spot inspection and gathering of material by Sri Ahmed Khan.

52. It was specifically contended by the petitioner before the Tribunal that it was impermissible for M.A. Hafeez Siddiqui to rely upon the findings of Sri Ahmed Khan, the previous Enquiry Officer.

53. There is no dispute that the appointment of Ahmed Khan as Enquiry Officer by the Chief Executive Officer of the Board was set aside by a Division Bench of this Court in its order dt. 18-07-2002 in W.A. No. 1103 of 2002 and W.P. No. 3287 of 2002 filed by the petitioner on the ground that the Chief Executive Officer of the Board had no jurisdiction to appoint an Enquiry Officer to conduct

an enquiry against the petitioner-Muthawali. So any reports of inspections done by the said Ahmed Khan would be null and void and cannot form the basis for any conclusion of misconduct against the petitioner. M.A. Hafeez Siddiqui, the subsequent Enquiry Officer, is expected to conduct an independent enquiry into the matter and his conduct in relying upon the findings of Sri Ahmed Khan in his enquiry report dt. 15-01-2005 cannot be upheld. Therefore, this issue is also answered in favour of the petitioner and against the 1st respondent-Board.

Issue No. (f)

54. Apart from the infirmities pointed out by me in the impugned order passed by the Tribunal supra, it is also to be noticed that it relied on certain sale transactions filed by ex-Secretary of 6th respondent as evidence of sale of the properties of the institution by petitioner. These transactions are dt. 09-06-1998, 05-02-1998, 01-07-1998, 08-10-1999 (two transactions).

55. All these transactions are prior to 25-05-2000, the date on which the order was passed by the Chief Executive Officer of the Board cancelling the order dt. 26-11-1993 terminating the Muthawaliship of the petitioner. Since these transactions took place prior to the reinstatement of petitioner, the petitioner cannot be held responsible for them.

56. Even though the petitioner secured interim order dt. 29-11-1993 in W.P.M.P. No. 22589 of 1993 in W.P. No. 17879 of 19993 permitting him to maintain and take care of the Dargah, the said order prohibited him from dealing with any movable and immovable properties pertaining to the Wakf institution. The Writ Petition No. 17879 of 1993 was allowed on 06-12-1999 setting aside the order dt. 26-11-1993 terminating the services of the petitioner as Muthawali. But even in the final order, the petitioner was prohibited from dealing with the movable and immovable properties of the Wakf institution.

57. Moreover according to the Tribunal, these sale documents appear to have been signed by Zaheer Ali Khan/Zaheer Khan as witness but the petitioner's name is Zaheer Ahmed Khan. Therefore, it cannot be said that he signed the said documents as witness. Admittedly, the name of the vendor in these documents is mentioned as Mir Shujath Ali and others. It is not the finding of the Enquiry Officer M.A. Hafeez Siddiqui or the Tribunal that the petitioner had sold the properties covered by these documents.

58. No evidence is placed on record by the 1st respondent-Board or by the complainant that the vendors of the land of the institution under the above documents are agents of the petitioner except a mere allegation.

59. Therefore, in my opinion, there is no evidence on record to establish that the petitioner had sold the properties of the institution either by himself or through his agents.

60. Moreover, in the complaint dt. 17-08-2001, Mohd. Nawazuddin complained that the petitioner had sold Ac.700 of agricultural land worth Rs. 200 crores. The



proceedings dt. 25-01-1993 appointing the petitioner as temporary Muthawali of the institution as well as the proceeding dt. 26-11-1993 terminating his services, both mentioned that only Ac.232 was owned by the institution. It is not known on what basis the complainant alleged that Ac.700 belonging to the institution was sold by petitioner. This indicates that the complainant was motivated by extraneous considerations and made the complaint only with a view to harass the petitioner.

61. In any event nothing prevented the Wakf Board from taking steps to recover the properties of the institution which have been sold. u/s 51 of the Act, any such alienation without its sanction of the Board is void. u/s 52 of the Act, the Board is empowered to take action to recover properties alienated in violation of Section 51. This has not been done and the petitioner is being unfairly blamed for sales of properties of the institution not made by him. The material on record indicates that several proceedings have been initiated by the petitioner to protect the properties of the institution (Exs. B-28 to B-32, B-41 to B-51 and B-55 to B-75) and therefore, it cannot be said that the petitioner did not take any steps to protect the properties of the institution.

62. The counsel for the Board contended that the misconduct of the petitioner is clear from the fact that in O.S. No. 110 of 1990 filed against him by one G.V.V.R.P. Varma and another for a perpetual injunction, petitioner set up title to the Wakf land. A reading of the written statement filed by the petitioner extracted at para 4 of the judgment in the said suit filed by parties in this CRP indicates that did not set up any title to the land of the Wakf institution. He clearly pleaded that he is Muthawali of the Dargah/Wakf institution and the land is service Inam land for services to the said institution. However the suit was decreed in favour of the plaintiffs therein. It is clear that petitioner tried to protect the interests of the institution but did not succeed.

63. In any event once Sri Md. Rabbani had exonerated the petitioner of any wrong doing in regard to the sale of the properties of the institution, and his report was accepted by the Board, the same issue could not have been reopened by M.A. Hafeez Siddiqui again after he found that allegation (ii) about petitioner paying bribes to ex-Chairman, etc., of the Board is not proved. The same logic would apply to the allegations as to non-maintenance of accounts, non-submission of budget statements, non-payment of Wakf fund and non-audit of the accounts. Therefore, the petitioner cannot be punished for these acts either.

64. The decision in Board of Muslim Wakfs, Rajasthan (supra) cited by the counsel for 1st respondent dealt with the provisions of the Wakf Act, 1954 and the interpretation of the term "person interested" in Section 6 of the Act. The said decision has no application to the present case.

65. In Om Prakash Mann (supra) cited by the counsel for the respondents, it was held that a Head Master against whom disciplinary proceedings are pending did not raise any plea that the charges framed against him were vague in his reply to

the charge sheet and therefore, he is precluded in raising the said plea in proceedings challenging the punishment. In the present case, no mention is made in the charges framed by M.A. Hafeez Siddiqui as to the period when the petitioner is supposed to have sold the lands of the institution but in the evidence adduced only sale deeds prior to 2000 are referred to. I have already held that he took charge only on 25-05-2000 and he had nothing to do with the above sale deeds. Therefore, this decision also has no application to the case.

66. In *State of Maharashtra (supra)*, the Supreme Court set aside an order passed by the High Court (which had declared that an order passed by the State Government removing the respondent from the service in the Maharashtra State Board of Secondary and Higher Secondary Education) is bad in law. In that case, the show cause notice issued by it did not indicate specifically that his activities were detrimental to or obstructing the functioning of the Board, the only ground on which his services could be terminated u/s 15(2) of the Act and the show cause notice only stated that his activities were not conducive to the functioning of the Board. The facts in this case are totally different from the present one and do not help the 1st respondent-Board.

67. In *Council of Scientific and Industrial Research (supra)*, the Supreme Court held that even if Tribunals constituted under the Administrative Tribunals Act, 1985 make some legal errors, still if substantial justice has been rendered, the Court should not interfere unless there is manifest injustice. The said case dealt with exercise of power by the Supreme Court under Article 136 of the Constitution of India and cannot be applied to exercise of jurisdiction by this Court u/s 83(9) of the Act where this Court is entitled to go into the correctness, legality or propriety of determination by the Tribunal. The scope of Revisional jurisdiction of this Court u/s 83(9) of the Act is wider than that under Article 136 of the Constitution of India. So this decision has no bearing on the present case.

68. In *Majlis-e-Shura Dasti (supra)*, this Court interpreted Sections 96 and 97 of the Act which deal with power of Central Government to regulate secular activities of Wakfs and directions which may be given by it to the State Government. This case has nothing to do with the present case.

69. In *Alhaj Iftekhhar Ahmad (supra)*, the Madhya Pradesh High Court on the facts of the case declined to interfere in a Revision u/section 89(3) of the Act with an order of removal of a Muthawali.

70. In *K.P. Zainulabdeen (supra)*, the Madras High Court took the view that non-furnishing of copy of enquiry report is not a ground to set aside an order of removal of a Muthawali from service. This decision is contrary to the decision of the Supreme Court in *Managing Director, ECIL (supra)* and is no longer good law.

71. Therefore, I am of the opinion this issue is to be answered in favour of the petitioner and against the 1st respondent-Board.

72. Having regard to findings on the above issues, the impugned order dt.

16-06-2008 of the A.P. Wakf Tribunal, Hyderabad in Appeal No. 1 of 2005 is set aside; consequently, the proceeding of the Chief Executive Officer of the Board in ref. F. No. JC/RR/2000/B2 dt. 19-02-2005 is also set aside. The petitioner shall be forthwith reinstated as Muthawali of Dargah Hazrath Kohe Moula Ali by the Board. The C.R.P. is allowed accordingly. No costs. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.