

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WP No.38056 of 2016**

**ORDER:**

This writ petition is filed seeking to issue a writ of mandamus declaring the proceedings in Rc.No.1184/A6/Corr/2015, dated 29-09-2016 passed by the 4<sup>th</sup> respondent in noting the “change” of Correspondentship of the Asafia Primary & High School, Malakpet, from the 2<sup>nd</sup> petitioner to the 6<sup>th</sup> respondent as being illegal, arbitrary, discriminatory and violative of Articles 14, 29 and 30 of the Constitution and Section 24 of the AP Educational Act, 1982, (“the Act”, for short) besides violation of principles of natural justice and consequently direct the respondents not to give effect to the said proceedings in the interest of justice.

02. This Court by order dated 04-11-2016 granted interim suspension of the impugned order dated 29-09-2016. The vacate petition being WVMP No.4445 of 2016 filed by the 6<sup>th</sup> respondent seeking to vacate the order dated 04-11-2016 ended in dismissal. In WA No.519 of 2017 preferred against the dismissal of the vacate petition, a Division Bench of this Court refused to interfere with the exercise of discretion by

the learned single Judge in making the stay absolute and permitted the parties to raise all questions at the hearing of the writ petition. The 6<sup>th</sup> respondent aggrieved further carried the matter in SLP being SLP (Civil) No.15001 of 2018. The Supreme Court by order dated 18-05-2018, while declining to interfere with the impugned judgment in the writ appeal, required that the writ petition be decided as early as possible preferably within three months. Pursuant to the said directions, this matter came up for hearing.

03. Facts stated are:-Mumtaz Yaruddowla Trust is an endowed Wakf. The endowment of Wakf was made by Nawab Mumtaz Yaruddowla with the properties mentioned in the registered deed bearing document No.358/1334 Fasli. The endowed Wakf consists, among other properties, mainly three educational institutions viz., i) Asafia Primary & High School, Malakpet; ii) Mumtaz Degree College, Malakpet and Mumtaz College of Engineering & Technology, Malakpet, (for short, “the Wakf”). The 1<sup>st</sup> petitioner claims to be the founder and honorary Secretary of registered Wakf. He as 2<sup>nd</sup> petitioner claims to be functioning as Correspondent of these three educational institutions since several decades.

04. In this writ petition, we are concerned with the affairs of the Asafia Primary & High School, Malakpet, ("the School" for short). A resolution dated 04-11-2013 has been passed under the Presidentship of 7<sup>th</sup> respondent (Ghulam Yazdani), who is impleaded in this writ petition, to incorporate the changes of the members of Managing Committee of the Wakf nominating Khusru Ali Baig, as the Secretary, in place of the 2<sup>nd</sup> petitioner, and others as members Managing Committee of the Wakf. Resolution submitted to the then AP State Wakf Board was approved vide proceedings dated 27-11-2013. Aggrieved by the nomination of Khusru Ali Baig, who is not a party to this writ petition, and others as members of the Managing Committee, the 2<sup>nd</sup> petitioner filed OA No.64 of 2013 on the file of AP State Wakf Tribunal. Interlocutory application being IA no.155 of 2014 filed for interim injunction restraining the AP State Wakf Board, the 7<sup>th</sup> respondent herein and the said Khusru Ali Baig and others from interfering with or causing any disturbance to the management of the Wakf by the 2<sup>nd</sup> petitioner as Correspondent of the Wakf, was allowed by order dated 30-09-2014. The 7<sup>th</sup> respondent and the said Khusru Ali Baig, aggrieved thereby filed CRP No.3497 of 2014 and the

same was disposed of by this Court by order dated 14-11-2014 with a clarification that the 7<sup>th</sup> respondent shall be part of the Managing Committee of the Wakf and entitled to take part in the affairs of the institutions and shall be entitled to put forth his views on matters pertaining to admissions, appointments etc., and in case of expenditure beyond Rs.1 Lac, it can be incurred only with the approval of the Wakf Tribunal and in other respects the terms on which the interim injunction granted by the Wakf Tribunal was maintained.

05. While the matter stood thus, on 03-11-2016, Police from the 5<sup>th</sup> respondent-Malakpet PS came to the 2<sup>nd</sup> petitioner and informed him that they received a letter dated 29-09-2016 from the 4<sup>th</sup> respondent-District Educational Officer, Hyderabad, wherein the 6<sup>th</sup> respondent was “noted” as Correspondent of the School and, therefore, the 2<sup>nd</sup> petitioner should hand over charge to the 6<sup>th</sup> respondent. That he did not receive any notice from any of the official respondents regarding any proposal of change of Correspondentship nor given opportunity of being heard in the matter before passing the impugned order dated 29-09-2016. That the Managing Committee of the Wakf nor the Governing Body of the School

sent any proposal nominating anybody much less the 6<sup>th</sup> respondent as the Correspondent in place of the 2<sup>nd</sup> petitioner. That the 6<sup>th</sup> respondent is either a member of the Managing Committee of the Wakf or Governing Body of the School. The impugned order was issued behind the back and even without any request for change of Correspondentship and without there being any allegation as to the functioning of the School by the 2<sup>nd</sup> petitioner. That the impugned order dated 29-09-2016 passed by the 4<sup>th</sup> respondent is arbitrary, discriminatory and violative of Section 24 of the AP Education Act, 1982, ("the Act" for short). Hence, the writ petition.

06. Counter affidavit is filed by 4<sup>th</sup> respondent-DEO, Hyderabad, on his behalf and also on behalf of respondents 1 to 3 wherein it is stated that the School is an aided School and the School management has sent proposal on 20-06-2012 for appointment of 6<sup>th</sup> respondent as Correspondent along with Governing Body resolution dated 07-07-2011. As certain documents required were not enclosed with the proposal, the same was returned and after compliance, the 2<sup>nd</sup> respondent-District Collector, Hyderabad, approved the proposal of appointment of 6<sup>th</sup> respondent as Correspondent of the

School vide orders dated 20-09-2016 and based on the orders of the 2<sup>nd</sup> respondent, the 4<sup>th</sup> respondent-DEO, Hyderabad, issued the impugned proceedings dated to 29-09- 2016. It is also stated the 2<sup>nd</sup> petitioner has not filed any material to show that he has been appointed earlier as the Correspondent of the School.

07. The 6<sup>th</sup> respondent filed counter affidavit wherein it is stated that Mumtaz Yaruddowla Trust is an endowed Wakf with the AP Wakf Board and the endowment was made by Nawab Mumtaz Yaruddowla by way of registered deed bearing document No.358/1334 Fasli. That there is no amendment made to the original Wakfnama. That the claim of the 2<sup>nd</sup> petitioner that Nawab Mumtaz Yaruddowla executed a rectification deed bearing document No.39/1952, but the *Umar-a-Mazabi*, the Ecclesial Department of H.E.H. the Nizam, declined to approve the amendment to the original Wakf deed, as the original Wakqeef did not reserve his right to amend or alter the original Wakfnama. That Section 36 of the Wakf Act, 1995 or the Wakf Act, 1954 did not empower the Registrar to register any changes made to the original Wakf. That in the absence of any power retained in the original Wakf deed, there

cannot be any amendment or rectification to the original Wakf deed. That the rectification deed bearing Doc.No.39/1952 is void *ab-initio* and illegal. That the original Wakf deed bearing document No.358/1334 Fasli clearly contemplates that Nawab Mumtaz Yaruddowla shall be the Muthawali during his lifetime and after his demise, Asif Ali Baig, eldest grandson of Nawab Afasar-Ul-Mulk and Nawab Nazar Yar Jung Bahadur shall be the Muthawali and out of whom, one shall be his relative, who shall be the Muthawali. That the rectification deed bearing document No.39/1952 which deletes the condition specified in the original Wakf deed that out of the two Muthawalis, one should be the relative of Nawab Mumtaz Yaruddowla imposed in the original Wakf deed, is void *ab-initio* and unenforceable.

08. That in March 2003, a representation was made on behalf of Mumtaz Yaruddowla Wakf, with 13 members as Board of Trustees of Majlis-e-Umma Mumtaz Yaruddowla Wakf. The Inspector of Audit (Wakf) submitted his report dated 01-07-2003 recommending the Registration of the said Committee, which was placed before the Board of Directors of the Wakf Board and resolved to appoint a Managing

Committee of 11 members, for a period of one year vide proceedings dated 21-07-2003.

09. That the 2<sup>nd</sup> petitioner questioned the said proceedings dated 21-07-2003 in OA No.13 of 2003 on the file of Wakf Tribunal. That by order dated 21-12-2003, the said OA No.13 of 2003 was allowed, against which civil revision petition was preferred which was also dismissed confirming the order passed in OA No.13 of 2003. But the 6<sup>th</sup> respondent states that OA No.13 of 2003 was allowed only based on the amended Wakf Deed bearing document No.39/1352 Fasli, which is contrary to the original Wakf deed bearing document No.358/1334 Fasli.

10. Another representation dated 11-05-2010 was made to the Wakf Board wherein certain allegations were made against the 2<sup>nd</sup> petitioner with regard to the managing of the affairs of the Wakf. The Wakf Board after conducting an enquiry appointed Managing Committee vide its proceedings dated 31-05-2010. Such proceedings dated 31-05-2010 was also questioned by the 2<sup>nd</sup> petitioner in OA No.12/2010 which was allowed by order dated 16-03-2012 declaring the proceedings dated 31-05-2010 as illegal and void.

11. The present proceedings pending between the parties are set in motion by Khusru Ali Baig by way of making a representation to the Wakf Board to incorporate change of members and office bearers of Majilis-e-Umna of Mumtaz Yaruddowla Wakf and acting on the said representation the Wakf Board through proceedings dated 27-11-2003 ratified the action of election of Khusru Ali Baig as the Honorary Secretary of Mumtaz Yaruddowla Wakf. Thereafter, as noted above, the 2<sup>nd</sup> petitioner assailed the said proceedings in OA No.64 of 2013 before the Wakf Tribunal and an interim injunction was granted in the said proceedings and the OA is still pending. The 2<sup>nd</sup> petitioner also challenged the proceedings dated 27-11-2003 of the Wakf Board, in the writ petition, being WP No.38308 of 2013 and the same was disposed of with directions as under:-

*“In view of that, therefore, it is necessary to clarify that the impugned proceedings merely amount to identifying the managing committee of the Wakf institution as per its resolution dated 04 – 11 – 2013 and the same does not amount to any stamp of approval or recognition of the said committee by the Wakf Board by virtue of the impugned proceedings. The AP State Wakf Tribunal shall be free to adjudicate upon the merits of OA No.64 of 2013 and pass appropriate orders in accordance with law.”*

12. As noted above, against the interim order passed in OA No.64 of 2013, the 7<sup>th</sup> respondent filed CRP No.3497 of 2014 and disposing of the said CRP, this Court maintained the interim order passed by the Tribunal, except observing that the 7<sup>th</sup> respondent will also be a part of the Managing Committee of the Wakf along with others. It is stated that the 2<sup>nd</sup> petitioner is also facing criminal cases registered in Cr.no.92 of 2014 on the file of PS, CCS, for the offence punishable under Sections 406,403,420 IPC and Section 61 (2) (a) (i), 61 (2) (b) and Section 101 of Wakf Act and FIR No.93 of 2014 on the file of PS, CCS and another case lodged by Khusru Ali Baig registered as FIR No.22 of 2014 on the file of PS, Malakpet, for the offences punishable under Sections 380, 427, 506 and 34 IPC.

13. The 6<sup>th</sup> respondent also stated that Section 47 of the Wakf Act, 1995, clearly contemplates the audit of accounts of Wakf is mandatory and a duty cast under Section 46 of the Wakf Act to submit the accounts of Wakf to Wakf Board under Section 47 (2) of the Wakf Act, which should be construed under Section 48 of the Act and appropriate orders be passed thereon. Since the books of accounts were not

submitted by the 2<sup>nd</sup> petitioner to the Wakf Board under Section 46 of the Wakf Act, action as required under Sections 47 and 48 of the Act could have been taken by the Wakf Board. That due to the inaction of the Wakf Board to take action on the 2<sup>nd</sup> petitioner, the illegal acts in managing the Wakf are continuously going unabated and the institutions under the Wakf are heading towards closure, which is contrary to the registered Wakfnama bearing document No.358/1334 Fasli and totally destroying the intention the Wakeef in endowing his properties for the benefit of the Society besides misappropriating huge amounts for the uses not made known to the Wakf Board. It is also stated that separate Committees were formed to each of the three institutions. The instant School with which this writ petition is concerned, the Managing Committee is formed with the registration No.578 of 2009 registered on 09-09-2009 with the Registrar of Societies, Hyderabad. That at the time of Registration of the Society, Prof AR Zafar was the Secretary of the Managing Committee and following the due procedure, a proposal was submitted for approving the Secretary and Correspondentship of the School and proposal was approved.

However, the said Prof. AR Zafar expired on 07-07-2011. Thereafter, again a resolution was passed by the Managing Committee of the School appointing the 6<sup>th</sup> respondent as Secretary and Correspondent of the School in place of Prof. AR Zafar and accordingly on 11-07-2011, a letter was addressed to the 4<sup>th</sup> respondent-DEO, Hyderabad, to note the change of Correspondentship from that of the petitioner to 6<sup>th</sup> respondent. That therefore the 4<sup>th</sup> respondent-DEO, Hyderabad, passed the impugned proceedings noting the change of Correspondentship of 6<sup>th</sup> respondent as Correspondent of the School and from the date of the impugned order, the 6<sup>th</sup> respondent is exercising powers conferred under Section 24 of the Act. That on 07-10-2016, the Deputy Educational Officer who was appointed as Special Officer during the interregnum period handed over charge of affairs of the School to the 6<sup>th</sup> respondent. It is denied that the 2<sup>nd</sup> petitioner was the Secretary and Correspondent of the School and that the 2<sup>nd</sup> petitioner did not function as Secretary and Correspondent from the year 2009 onwards and no material evidencing the fact that the 2<sup>nd</sup> petitioner has been discharging duties as Secretary and Correspondent of the

School. That the 2<sup>nd</sup> petitioner did not question the election of the 6<sup>th</sup> respondent as Secretary and Correspondent of the School and without questioning his election as Secretary and Correspondent of the School, the 2<sup>nd</sup> petitioner is not entitled to challenge the impugned proceedings dated 29-09-2016 passed by the 4<sup>th</sup> respondent-DEO, Hyderabad. The 6<sup>th</sup> respondent also refers to various incidents with regard to the functioning and managing the affairs of the School and the illegalities allegedly committed by the 2<sup>nd</sup> petitioner, which need not be noted for the purpose of these proceedings.

14. Counter affidavit is also filed by the 7<sup>th</sup> respondent and most of the counter averments made by the 6<sup>th</sup> respondent are reiterated. The other averments made by the 7<sup>th</sup> respondent is to the effect that the 2<sup>nd</sup> petitioner is neither the honorary Secretary of the Wakf nor the Correspondent of the School and when once he is not the Correspondent of the School, the question of issuing notice to him before appointing the 6<sup>th</sup> respondent as the Secretary and Correspondent of the School does not arise and his claim is not supported by any authority of law. That separate Committees are looking after the institutions run by the Mumtaz Yaruddowla Trust and in

so far as the School, the School is registered with the Registrar of Societies, Hyderabad, vide Registration No.578 of 2009, dated 09-09-2009 and the Managing Committee of the School following the procedure appointed Prof. AR Zafar as Correspondent of the School and his appointment was approved vide proceedings dated 18-08-2010 by the 4<sup>th</sup> respondent. But, due to ill-health the said person expired and therefore the Managing Committee passed resolution dated 07-07-2011 appointing the 6<sup>th</sup> respondent as Secretary and Correspondent of the School and a letter dated 11-07-2011 addressed to the 4<sup>th</sup> respondent which was counter signed by the Deputy Educational Officer and pending approval of the appointment of 6<sup>th</sup> respondent as Secretary/Correspondent, the 4<sup>th</sup> respondent has issued orders dated 17-11-2012 and appointed the Deputy Educational Officer, as Special Officer of the School and the said arrangement continued till 07-10-2016. The 6<sup>th</sup> respondent was appointed as Correspondent of the School, as proposed by the Managing Committee of the School, and the 6<sup>th</sup> respondent took charge from the Special Officer on 07-10-2016 and since then he has been discharging duties as Correspondent of the School. It is stated that the

petitioner was never appointed as Correspondent of the School and he never obtained any orders from any authority to act as Correspondent and therefore the question of issuing any notice to him does not arise and he has no *locus standi* to challenge the proceedings impugned in the writ petition.

15. In reply affidavit to the counter affidavit filed by the 6<sup>th</sup> respondent, the petitioner stated that the 6<sup>th</sup> respondent is totally stranger and he has no knowledge much less competence to speak about the affairs of the Wakf. That the Society formed on 09-09-2009 in the name style of Asafia High School Managing Committee, Hyderabad, and registered under the Societies Registration Act, 2009, for the purpose of management of the affairs of the School is absolutely illegal any such a Society is formed contrary to the Wakfnama of Wakf and it does not state at whose instance the Society was registered and out of (10) members shown as founders of the Society, (7) members were never the members of the Wakf. That by order dated 16-03-2012 in OA No.12 of 2010, the AP State Wakf Tribunal set aside the proceedings of the AP State Wakf Board, dated 31-05-2010 in approving the said (07) members as members of the Managing Committee of the Wakf.

That the registration of the said Society under the provisions of the Societies Registration Act, 2009, itself is nullity in the eye of law as it was never formed with the consent and approval of the Wakf Board. That the Wakqee in the rectification deed bearing document No.39 of 1352 Fasli categorically stated that the Board of Governors should administer the Wakf. That even under Section 24 (2) of the Act, it is only the Governing Body of the Managing Committee of the Wakf which promoted the educational institution that would be the management for the purpose of Section 24 of the Act and there cannot be any other body which can administer the management of the educational institution for the purpose of Section 24 of the Act. That the registration of the Society is null and void *ab-initio* and all consequential acts said to have been taken place by and in the name of the Society or nomination of the 6<sup>th</sup> respondent as Correspondent of the School is invalid. That in OA No.12 of 2010, the proceedings of the AP State Wakf Board, dated 31-05-2010, appointing Khusru Ali Baig as President of the Wakf was set aside and, therefore, the said Khusru Ali Baig is not at all competent to represent the Wakf. That the validity of the rectification deed

bearing document No.39 of 1352 Fasli was accepted by the Wakf Tribunal in OA No.12 of 2003. That the appointment of Special Officer of the School was only for the purpose of disbursement of salary among the staff of the School, the School being an aided School. It is denied that the Special Officer handed over charge of the affairs of the School to the 6<sup>th</sup> respondent. That the 6<sup>th</sup> respondent, at the behest of the third parties and vested interests is trying to grab the School by falsely claiming himself to be the Correspondent of the School and, therefore, the writ petition deserves to be allowed and the impugned order is liable to be set aside.

16. Heard Sri B. Nalin Kumar, learned counsel for the petitioner, learned Government Pleader for Education for respondents 1 to 4, learned Government Pleader for Home for respondent no.5, Sri S. Ashok Anand Kumar for respondent no.6 and Sri V. Ravi Kiran Rao, learned counsel for respondent no.7.

17. Having heard learned counsel for the parties and understood the genealogy of the case, the following issues arise for consideration:-

- i) *Whether the School being an aided School and an endowed Wakf, mere intimation of change of Correspondentship of the School is sufficient or it requires the approval in the light of the instructions contained in grant-in-aid Code ?*
- ii) *Whether the 2<sup>nd</sup> petitioner who claims to be functioning as the Correspondent of the School is entitled to notice before effecting the impugned proceedings which “noted” the change of Correspondentship and recognized the 6<sup>th</sup> respondent as the Correspondent of the School ? &*
- iii) *Whether the appointment of the 6<sup>th</sup> respondent as Correspondent of the School by the Management Committee of the Society registered under the Societies Registration Act is valid when the School is an endowed Wakf ?*

18. **Issues (i) to (iii):** Section 24 of the Act relates to appointment and removal of the manager of the private institution. Under Section 24 of the Act, every institution shall have a Managing Committee to manage the affairs of the School. Under Section 24 (2) of the Act, the Managing Committee shall nominate a person to manage the affairs of the institution and intimate such nomination within 30 days thereof to the Competent Authority. It is not in dispute that the School is an aided educational institution and is admitted to grant-in-aid. Indisputably, under Section 24 (2) of the Act mere intimation to the competent authority to “note” the change of Correspondentship applies only in

respect of private institutions and not in respect of an aided institution. It is to be seen that grant-in-aid Code is non-statutory in nature and has not been framed under any statute. But, it is provided that where the conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private institution to accept them or refuse, but in case if it (the management of the School) decided not to accept the instructions, it will not be entitled to get the grant-in-aid which is contingent on its accepting the conditions contained in the Code and such a stipulation is made in Rule 8 (Declaration by the Management) of the grant-in-aid Code. It is understood that the grant-in-aid money is the money belonging to the Government which is sent to the School for the specific purpose of paying to the teachers on account of their salaries and dearness allowances etc., through the agency of the Managing Committee of the School. In respect of School, under Rule 7 (Management) of the Code it is stipulated that for the change of Correspondentship, “approval” by the Officer Authorised by the Director in that behalf is necessary and to the same effect is the observation of the Division Bench of this Court in the judgment passed in WA No.519 of 2017.

19. In this case the proposal to “note” the change of Correspondentship is mooted in the year 2012 and the 4<sup>th</sup> respondent-DEO, Hyderabad, by the impugned order dated 29-09-2016 “noted” the change of Correspondentship. When once the School is receiving the grant-in-aid, the Management Committee of the School is under obligation to observe the Rules of the grant-in-aid Code and in such an event change of Correspondentship requires the “approval” of the Officer authorised by the Director in that behalf and mere intimation to “note” the change of Correspondentship does not comply the said requirement. Change of Correspondentship and intimation thereof under Section 24(2) of the Act applies in respect of the private institutions not to an institution receiving grant-in-aid from the Government.

20. Sri S.Ashok Anand Kumar, learned counsel for the 6<sup>th</sup> respondent contended that the order passed in OA No.12 of 2010 is not binding on the 6<sup>th</sup> respondent since he is not a party to the proceedings and there is no impediment for his nomination as the Correspondent of the School and “noting” him to be as such, by the 4<sup>th</sup> respondent in exercise of powers under Section 24 (2) of the Act. Learned counsel submits that

all that Section 24 (2) requires is intimation to the competent authority as to the nomination of the Correspondent/Secretary to manage the affairs of the School. Such a course is available in case of management of a private institution not receiving any Government aid, has power to nominate a person to manage the affairs of its institutions and Section 24 (2) of the Act, only intimation of such nomination to the competent authority would be sufficient, but not approval. As noted above, the School is admitted to grant-in-aid, as such change of Correspondentship/Secretary of the School requires approval of the Officer authorised by the Director in that behalf.

21. A peculiar situation is emerging in this case as the contesting parties are vying to topple and take control of the management of the School. Two groups, one represented by the 2<sup>nd</sup> petitioner and another represented by the 7<sup>th</sup> respondent are vying to take control of the affairs of the School and claiming to have proprietary to control and manage the affairs of the School and the Wakf. While the 2<sup>nd</sup> petitioner claims to be the founder of the three educational institutions including the School and the Secretary of the School, claiming

his rights under the registered Wakfnama of the year 1934 and the rectification deed No.39 of 1952, the 6<sup>th</sup> respondent is claiming to be the Correspondent of the School having nominated by the Managing Committee of the Society registered under the provisions of the AP Societies Registration Act, 2001. The Managing Committee constituted by the 7<sup>th</sup> respondent consisting of (10) members *viz.*, 1. Nawab Ibrahim Khaleel, 2.Mirza Khusru Ali Baig, 3.Prof. AR Zaffar, 4.Syed Maqbool Ali Warisi, 5.Shah Mohd. Syeeduddin, 6.Begum Anees Khan, 7.Nawab Ali Khusuru Jung, 8.Asadulla Pasha, 9.Rehana & 10.Hasan and Sarwar Babu Khan. It is a matter of record that on 31-05-2010 the then AP State Wakf Board issued proceedings and constituted a Managing Committee under Section 18 of the Wakf Act consisting of (11) members, was assailed by the 2<sup>nd</sup> petitioner in OA No.12 of 2010 before the AP State Wakf Tribunal and by order dated 16-03-2012 the said proceedings dated 31-05-2010 were declared as null and void. It is also a matter of record that earlier the Wakf Board had resorted to similar action of appointing a Managing Committee under Section 18 of the Wakf Act for the subject Wakf institution, which was assailed by the 2<sup>nd</sup> petitioner in

OA No.13 Of 2003 and the said order was set aside mainly on the Wakf Board referring in its counter filed therein acknowledging the creation and existence of the trust for the governance of the subject Wakf as per the Wakeef's rectification deed and the appointment was made under 'a misconception' as it has no knowledge of it, which order was also confirmed by this Court in CRP No.353 of 2005.

22. In instant case, the question as to the very management of the School is in dispute and is subject matter of OA No.64 of 2013 which is pending adjudication. In the order passed in the interlocutory application filed by the 2<sup>nd</sup> petitioner in the said OA No.64 of 2013 and the CRP filed against the said order, there is a finding that 2<sup>nd</sup> petitioner is functioning as Secretary and Correspondent of the institutions and such a finding is holding the field till date and OA No.64 of 2013 is pending. Admittedly, the nomination of Secretary of the School by name Khusru Ali Baig and others by the Managing Committee of the Society registered under the Societies Registration Act was set aside by the Wakf Tribunal in OA No.12 of 2010 at the instance of the 2<sup>nd</sup> petitioner, therefore the argument of Sri S. Ashok Anand Kumar and Sri Ravi Kiran

Rao, learned counsel for 6<sup>th</sup> and 7<sup>th</sup> respondents that there was no necessity to issue notice to the 2<sup>nd</sup> petitioner cannot be countenanced. In the counter affidavit filed by the 6<sup>th</sup> respondent itself it is averred that the 2<sup>nd</sup> petitioner did not function as Secretary and Correspondent from the year 2009 till the date of filing counter affidavit, which goes to show that, even according to them, the 2<sup>nd</sup> petitioner functioned as such prior to 2009. It is also a matter of record that the 2<sup>nd</sup> petitioner in the capacity of Secretary filed various civil suits representing the Wakf institutions against the tenants thereof and third parties and succeeded in protecting Wakf institutions of which he claims to be the founder.

23. Article 14 of the Constitution guarantee the right of hearing to the person adversely affected by an administrative order. In **DELHI TRANSPORT CORPORATION vs. DTC MAZDOOR CONGRESS**<sup>1</sup>, the Supreme Court held that the *audi alteram partem* rule, in essence, enforce the equality clause in Article 14 of the Constitution and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act and an order depriving a person of

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<sup>1</sup> 1991 Suppl (1) SCC 600

his civil rights passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice.

To the same effect is the decision of this Court in **P.**

**JAGANNADHA RAO vs. COMMISSIONER AND DIRECTOR OF SCHOOL EDUCATION, GOVERNMENT OF AP.**<sup>2</sup> Para 6 of the

order thereof is as follows:-

*“.....the learned Government Pleader for School Education contends that as power exists under Section 24 (2) of the AP Education Act and this provision is silent with regard to providing an opportunity and notice the existing Correspondent no notice was issued to him. It is clear that power for appointment of a Correspondent or change of Correspondentship under Section 24 of the Act is a statutory power. In the absence of a statutory prescription excluding the principles of natural justice, the seminal principle of natural justice audi alteram partem is implicated and is not excluded by mere statutory silence. As demonstrably the impugned order had been issued by the first respondent without notice and opportunity to the writ petitioner, who as a consequence of this order has clearly suffered adverse civil consequences, the order is vitiated for violation of the principles of natural justice.....”*

24. Therefore it is to be concluded that issuance of notice to the 2<sup>n.d</sup> petitioner is a requirement of law, breach of such a requirement on the part of the 4<sup>th</sup> respondent-DEO, Hyderabad, invalidates his action taken by the impugned

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<sup>2</sup> (2004) 4 ALD 37

proceedings and on this short ground alone the impugned order is liable to be set aside.

25. This Court is not examining the controversy as to who is under the authority of law validly managing the affairs of the School. The subject matter of OA No.64 of 2013 filed by the 2<sup>nd</sup> petitioner filed against 6<sup>th</sup> and 7<sup>th</sup> respondents and other members who are not parties to this writ petition, pending adjudication is with regard to the validity of the authority to control the management of the affairs of the School. In the interlocutory order passed in the said OA No.64 of 2013, a prima facie finding is recorded by the Tribunal that the 2<sup>nd</sup> petitioner is a Secretary and also Correspondent of the institutions and the change required to follow certain legal procedures before the 3<sup>rd</sup> respondent therein takes over the administration.

26. The other contention of the learned counsel for the 2<sup>nd</sup> petitioner is that registration of a Society by the 7<sup>th</sup> respondent in respect of the School under the provisions of the Societies Registration Act is *nonest* in the eye of law as the provisions Societies Registration Act are in-applicable to properties endowed Wakf and notified to Wakf Board under the Wakf Act,

1995. He placed reliance on the decision of the Jharkhand High Court in ***MANAGING COMMITTEE OF EKRA MOSQUE vs. STATE OF BIHAR***<sup>3</sup> which arose in similar facts situation.

It was observed by the Jharkhand High Court that the provisions of the Societies Registration Act must be confined to the institutions referred to in Sections 1 and 20 therein and the Wakf Act being an Act to provide for the better administration and supervision of immovable and movable property, which is recognised by the Muslim law as pious, the Wakf Act being a special legislation, consequently ousts the applicability of the general law. It was further held that the Societies Registration Act has no role to play in matters relating to the administration, supervision and management of Wakfs.

27. Admittedly, even according to the 6<sup>th</sup> respondent he has been appointed through a resolution of the Managing Committee registered under the Societies Registration Act in respect of an endowed Wakf property. Under sub-Section (1) of Section 24 of the Education Act the management of every private institution shall be constituted in such manner and

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<sup>3</sup> 2003 SCC Online JHARKAND-32

shall consist of such number of members as may be prescribed: provided that the Board of Trustees, or Governing Body or Wakf Board, by whatever name called, constituted or appointed under any other law for the time being in force relating to the charitable and religious institutions and endowments and Wakfs, shall be deemed to be a management constituted under this sub-section.....” In this case the Managing Committee which appointed the 6<sup>th</sup> respondent is registered under the Societies Registration Act and not by the Board of Trustees or Governing Body or Wakf Board. The other contentions raised by the learned counsel for the respondents 6 and 7 with regard to the mis-management of the affairs of the School by the 2<sup>nd</sup> petitioner and he has no authority to continue in the post of Correspondentship of the School cannot be delved into in this proceedings. The issues (i) to (iii) are answered accordingly. However, any opinion expressed hereinabove is only for the purpose of this proceedings only.

28. For the reasons and analysis above, the impugned order dated 29-06-2016 is unsustainable in law and it is accordingly set aside. In the result, the writ petition is allowed.

Miscellaneous petitions if any pending shall stand disposed of. There shall be no order as to costs.

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**A.RAJASHEKER REDDY, J**

Dated: 01-10-2018  
NRG



**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**



WP No.38056 of 2016

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Dated: 01-10-2018

NRG