

Rep. by Act... 56... of 1954, S. 22 & 23. I.

THE WAKF (AMENDMENT) ACT, 1964

No. 34 OF 1964

[10th October, 1964.]

An Act further to amend the Wakf Act, 1954.

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

1. This Act may be called the Wakf (Amendment) Act, 1964. Short title
- 29 of 1954. 2. In section 3 of the Wakf Act, 1954 (hereinafter referred to as the principal Act),— Amendment of section 3.
- (i) in clause (a), for the words “established for the benefit of the Muslim community”, the words “sanctioned by the Muslim law” shall be substituted;
- (ii) in clause (c), for the word and figure “section 9”, the words, brackets, figures and letter “sub-section (1), or as the case may be, under sub-section (1A), of section 9” shall be substituted;
- (iii) after clause (d), the following clause shall be inserted, namely:—
- ‘(dd) “Council” means the Central Wakf Council established under section 8A;’;
- (iv) in clause (i), after the word “prescribed”, where that word occurs for the first time, the words, figures and letter “, except in Chapter IIA,” shall be inserted;
- (v) in clause (l), for sub-clause (ii), the following sub-clause shall be substituted, namely:—
- “(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable; and”.

Amendment of section 7.

3. In sub-section (1) of section 7 of the principal Act, after the words "cost of making a survey", the words "including the cost of publication of the list of wakfs" shall be inserted.

Insertion of new Chapter IIA.

4. In the principal Act, after Chapter II, the following Chapter shall be inserted, namely:—

"CHAPTER IIA

CENTRAL WAKF COUNCIL

(Constitute -
Establishment and Chapter
tion of the Central Wakf Council.

8A: (1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of a Chairman, who shall be the Union Minister in charge of wakfs, and such other members not exceeding twenty in number, as may be appointed by the Central Government.

(3) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, members of the Council shall be such as may be prescribed by rules made by the Central Government.

Finances of the Council.

8B. (1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent. of the aggregate of the net annual income of the properties of the wakfs in respect of which contribution is payable under sub-section (1) of section 46:

Provided that where the Board in the case of any particular wakf has remitted under sub-section (2) of section 46 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section, the net annual income of the property of the wakf in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit.

8C. (1) The Council shall cause to be maintained such Accounts books of account, and other books in relation to its accounts in and audit, such form and in such manner as may be prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central Wakf Fund.

8D. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter. Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council;

(b) control over and application of the Central Wakf Fund;

(c) the form and manner in which accounts of the Council may be maintained.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Amend-
ment of
section 9.

5. In section 9 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), if the Shia Wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia Wakfs in the State constitutes more than fifteen per cent. of the total income of the properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni Wakfs and for Shia Wakfs under such names as may be specified in the notification and in such a case, the provisions of this Act shall, in their application to the State, have effect as if the amendments specified in the Schedule had been made.”;

(b) in sub-section (2), for the words “The said Board”, the words “The Board” shall be substituted.

Amend-
ment of
section 11.

6. In section 11 of the principal Act, in clauses (b) and (c), the word “special” shall be omitted.

Amend-
ment of
section 15.

7. In section 15 of the principal Act, in sub-section (2),—

(a) in clause (e), for the portion beginning with the words “in any case” and ending with the words “of being heard”, the following shall be substituted, namely:—

“to direct—

(i) the utilization of the surplus income of a wakf consistently with the objects of the wakf;

(ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of a wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object which shall be similar, or as nearly as practicable similar, to the original object:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.”;

(b) for clause (j), the following clause shall be substituted, namely:—

“(j) to sanction in accordance with the Muslim law, any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, as required by section 36A:

Provided that no such sanction shall be given unless at least two-thirds of the members of the Board vote in favour of such transaction.”.

8. In section 22 of the principal Act, after the words “servant of the Board”, the words “or any committee thereof” shall be inserted. Amendment of section 22.

9. In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 23.

“(3) The powers conferred on the Secretary by sub-section (2) may also be exercised by such other officer or officers of the Board as may either generally or specially be authorised in this behalf by the Board.”.

10. Section 32 of the principal Act shall be re-numbered as sub-section (2) of that section, and before the sub-section as so re-numbered, the following sub-section shall be inserted, namely:— Amendment of section 32.

“(1) Every mutawalli shall keep regular accounts.”.

11. After section 36 of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 36A and 36B.

“36A. Notwithstanding anything contained in the wakf deed, no transfer of any immovable property of a wakf by way of— Transfer of immovable property of wakfs.

(i) sale, gift, mortgage or exchange; or

(ii) lease for a period exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building,

shall be valid without the previous sanction of the Board.

36B. (1) If the Board is satisfied, after making an inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakfs maintained under section 26, has been transferred without the previous sanction of the Board in contravention of the provisions of section 36A, it may send a requisition to the Collector within whose jurisdiction the property is situate to obtain and deliver possession of the property to it. Recovery of wakf property transferred in contravention of section 36A.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order or by sending it by post to the person for whom it is intended; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last-known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates:

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the district court within whose jurisdiction the property is situate and the decision of the district court on such appeal shall be final.

Explanation.—In this sub-section, “district court” means, in any area for which there is a city civil court, that court, and, in any other area, the principal civil court of original jurisdiction.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any, preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section, the Collector shall be guided by such rules as may be made in this behalf by the State Government.”

Amend-
ment of
section 41.

12. Clause (g) of sub-section (1) of section 41 of the principal Act shall be omitted.

13. In section 43 of the principal Act,—

Amend-
ment of
section 43.

(a) in sub-section (1), for clause (b), the following clauses shall be substituted, namely:—

“(b) has been convicted of an offence of criminal breach of trust or any other offence involving moral turpitude; or

(c) misappropriates or deals improperly with the properties of the wakf; or

(d) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli; or

(e) has failed to pay, without reasonable excuse, for two consecutive years, the contribution payable by him under section 46.”;

(b) in sub-section (2), after the words “appointed by the Board”, the words “or any person or authority not being a court of law” shall be inserted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (e) of sub-section (1) or under sub-section (2) may, within one month from the date of the receipt by him of the order, appeal against the order to the State Government and the decision of the State Government on such appeal shall be final and shall not be questioned in any court of law.”;

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) A mutawalli of a wakf removed from his office under this section shall not be eligible for appointment as a mutawalli of that wakf for a period of five years from the date of such removal.”.

14. After section 43 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
43A.

“43A. (1) Where no suitable person is available for appointment as a mutawalli of a wakf under section 42 or under sub-section (2) of section 43, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding in the aggregate five years, as may be specified in the notification.

Assump-
tion of
direct
manage-
ment of
certain
wakfs by
the Board

(2) Notwithstanding anything contained in section 33, the accounts of every wakf under the direct management of the Board shall be audited annually by an auditor to be appointed by the Board, from among chartered accountants in practice within the meaning of the Chartered Accountants Act, 1949." 38 of 1949.

Amendment of section 45.

15. In section 45 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Board may, either on an application received under section 44 or on its own motion,

(a) hold an inquiry in such manner as may be prescribed; or

(b) authorise any person in this behalf to hold an inquiry,

into any matter relating to a wakf and take such action as it thinks fit.”.

Amendment of section 46.

16. In section 46 of the principal Act, in sub-section (1), for the word “five”, the word “six” shall be substituted.

Amendment of section 48.

17. In section 48 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) All monies received or realised by the Board under this Act and all other monies received as donations, benefactions or grants by the Board shall form a fund to be called the Wakf Fund.

(1A) All monies received by the Board as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.”.

Omission of section 54.

18. Section 54 of the principal Act shall be omitted.

Substitution of new-section for section 55.

19. For section 55 of the principal Act, the following section shall be substituted, namely:—

“55. (1) A suit to obtain any of the reliefs mentioned in section 92 of the Code of Civil Procedure, 1908, relating to any wakf may, notwithstanding anything to the contrary contained in that section, be instituted by the Board without obtaining the consent referred to therein. 5 of 1908

Institution of suits under section 92 of the Code of Civil Procedure 1908.

5 of 1908.

(2) No suit to obtain any of the reliefs referred to in section 92 of the Code of Civil Procedure, 1908, relating to any wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board and for the institution of any such suit, it shall not be necessary to obtain the consent referred to in that section, notwithstanding anything contained therein:

Provided that nothing in this sub-section shall apply in relation to any such suit against the Board."

20. In section 62 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amend-
ment of
section 62.

"(1) The Central Government may issue such directions, as it may think fit, on questions of policy to be followed by a Board and for issuing such directions it may call for any periodic or other report or information from any Board through the Government of the State concerned."

21. After section 66B of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
66C.

"66C. Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being—

Applica-
tion of
Act to
properties
given or
donated
by persons
not profes-
sing Islam
for support
of certain
wakfs.

(a) a mosque, idgah, imambara, dargah, khangah or a maqbara;

(b) a Muslim graveyard;

(c) a choultry or a musafarkhana,

then such property shall be deemed to be comprised in that wakf and be dealt with in the same manner as the wakf in which it is so comprised."

22. In section 67 of the principal Act,—

Amend-
ment of
section 67.

(a) in sub-section (1), for the words "purposes of this Act", the words, figures and letter "purposes of this Act other than those of Chapter IIA" shall be substituted;

(b) in sub-section (2), in clause (h); the words "and approved by the State Government" shall be omitted.

Amend-
ment of
section 69.

23. In section 69 of the principal Act, in clause (2) of sub-section (1), the words and figure "Section 5 of" shall be omitted.

Insertion
of new
section 70
and Sche-
dule.

24. After section 69 of the principal Act, the following section and Schedule shall be inserted, namely:—

Removal of
difficulties.

"70. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

THE SCHEDULE

[See section 9 (1A)]

LIST OF AMENDMENTS

1. In sub-section (2) of section 5, for the words "a list of wakfs", the words "a list of Sunni wakfs or, as the case may be, Shia wakfs" shall be substituted.

2. In section 11,—

(a) for clause (b), the following clause shall be substituted, namely:—

"(b) persons having knowledge of Muslim law and representing, in the case of a Sunni Board of Wakfs, associations such as State Jamiat-ul-Ulama-i-Hind (whether such persons are Hanafi, Ahle-Hadis or Shefai) and in the case of a Shia Board of Wakfs, associations such as State Shia Conference;";

(b) the second proviso shall be omitted.

3. In clause (e) of sub-section (2) of section 15, the *Explanation* shall be omitted.

4. For section 27, the following section shall be substituted, namely:—

"27. (1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it shall refer the question to a civil court of competent jurisdiction.

(2) The decision of the civil court on any question referred to it under sub-section (1) shall be final."

Decision if
a property
is wakf
property.