

Wakf Act, 1995

Chapter 4 - Establishment of Board and their Functions

(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(2) 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 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.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

Section 14 - Composition of Board

(1) The Board for a State and the Union Territory of Delhi shall consist of

(a) a Chairperson;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of

(i) Muslim Members of Parliament from the State or, as the case may be, the Union Territory of Delhi,

(ii) Muslim Members of the State Legislature,

(iii) Muslim Members of the Bar Council of the State, and

(iv) mutawallis of the wakfs having an annual income of rupees one lakh and above;

(c) one and not more than two members to be nominated by the State Government representing eminent Muslim Organisations;

(d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology;

(e) an officer of the State Government not below the rank of Deputy Secretary.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed:

Provided that where the number of Muslim Members of Parliament, the State Legislature or the State Bar Council, as the case may be, is only one, such Muslim Member shall be declared to have been elected on the Board:

Provided further that where there are no Muslim Members in any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of

Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clauses (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall at, all times, be more than the nominated members of the Board except as provided under sub-section (3).

(5) Where there are Shia wakfs but no separate Shia Wakfs Board exists, at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(7) In the case of the Union Territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1):

Provided that there shall be one mutawalli as the member of the Board.

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

Section 15 - Term of office

The members of the Board shall hold office for a term of five years.

Section 16 - Disqualification for being appointed, or for continuing as, a member of the Board

A person shall be disqualified for being appointed, or for continuing as, a member of the Board if

- (a) he is not a Muslim and is less than twenty-one years of age;
- (b) he is found to be a person of unsound mind;
- (c) he is an undischarged insolvent;
- (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
- (e) he has been on a previous occasion
 - (i) removed from his office as a member or as a mutawalli, or
 - (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

Section 17 - Meetings of the Board

- (1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.
- (2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.
- (3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present, and in the case of equality of votes, the Chairperson or, in his absence any other person presiding shall have a second or casting vote,

Section 18 - Committees of the Board

- (1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.
- (2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees to be members of the Board.

Section 19 - Resignation of Chairperson and members

The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government:

Provided that the Chairperson or the member shall continue in office until the appointment of his successor is notified in the Official Gazette.

Section 20 - Removal of Chairperson and member

- (1) The State Government may, by notification in the Official Gazette, remove the Chairperson of the Board or any member thereof if he
- (a) is or becomes subject to any disqualifications specified in section 16; or
 - (b) refuses to act or is incapable of acting or acts in a manner which the State Government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the wakfs; or
 - (c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.
- (2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board.

Section 21 - Filling of a vacancy

When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

Section 22 - Vacancies etc., not to invalidate proceedings of the Board

No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Section 23 - Appointment of Chief Executive Officer and his term of office and other conditions of service

- (1) There shall be a Chief Executive Officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the Official Gazette.
- (2) The term of office and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.
- (3) The Chief Executive Officer shall be ex officio Secretary of the Board and shall be under the administrative control of the Board.

Section 24 - Officers and other employees of the Board

- (1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.
- (2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

Section 25 - Duties and powers of Chief Executive Officer

- (1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive Officer shall include
 - (a) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time for accounts, returns and information from mutawallis;
 - (b) inspecting or causing inspection of wakf properties and accounts, records, deeds or documents relating thereto;
 - (c) doing generally of such acts as may be necessary for, the control, maintenance and superintendence of wakfs.
- (2) In exercising the powers of giving directions under sub-section (1) in respect of any wakf, the Board shall act in conformity with the directions by the wakif in the deed of the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the wakf belongs.
- (3) Save as otherwise expressly provided in this Act, the Chief Executive Officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

Section 26 - Powers of Chief Executive Officer in respect of orders or resolutions of Board

Where the Chief Executive Officer considers that an order or resolution passed by the Board

- (a) has not been passed in accordance with the law; or
- (b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
- (c) if implemented, is likely to
 - (i) cause financial loss to the Board or to the concerned wakf or to the wakfs generally; or

(ii) lead to a riot or breach of peace; or

(iii) cause danger to human life, health or safety; or

(d) is not beneficial to the Board or to any wakf or to wakfs generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution and the decision of the State Government thereon shall be final.

Section 27 - Delegation of powers by the Board

The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

Section 28 - Chief Executive Officer to exercise powers through Collectors, etc

(1) Subject to the provisions of this Act and of the rules made thereunder, the Chief Executive Officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted Officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted Officer and may, at any time revoke the delegations so made by him.

(2) Where any delegation of powers is made by the Chief Executive Officer under subsection (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

Section 29 - Powers of Chief Executive Officer to inspect records, registers, etc

The Chief Executive Officer or any officer of the Board duly authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be wakf properties.

Section 30 - Inspection of records

(1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions as may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may 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.

Section 31 - Prevention of disqualification for membership of Parliament

It is hereby declared that the offices of the Chairperson or members of the Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a

Section 32 - Powers and functions of the Board

(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

Explanation. For the removal of doubts, it is hereby declared that in this sub-section, "wakf includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be

(a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;

(b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created;

(c) to give directions for the administration of wakfs;

(d) to settle schemes of management for a wakf:

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct

(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

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

(iii) in any case where any object of 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 nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

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

Explanation. For the purposes of this clause, the powers of the Board shall be exercised

(i) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

- (f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;
- (g) to appoint and remove mutawallis in accordance with the provisions of this Act;
- (h) to take measures for the recovery of lost properties of any wakf;
- (i) to institute and defend suits and proceedings relating to wakfs;
- (j) to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act:

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;

- (k) to administer the Wakf Fund;
 - (l) to call for such returns, statistics, accounts and of her information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;
 - (m) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto;
 - (n) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;
 - (o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.
- (3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.
- (4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.
- (5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately proceeding the taking over of the property by the Board.

- (6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

Section 33 - Powers of inspection by Chief Executive Officer or persons authorised by him

- (1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been

caused to any wakf or wakf property, the Chief Executive Officer with the proper approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the wakf shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had misappropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been misappropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

Section 34 - Recovery of the amount determined under section 33

Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief

Executive Officer, who shall, on receipt thereof, credit the amount to the funds of the concerned wakf.

Section 35 - Conditional attachment by Tribunal

(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent

to defeat or delay the execution of the said order,

(a) is about to dispose of the whole or any part of the property; or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as if it were an order for attachment made under the provision of the said Code.