

## Wakf Act, 1995

### Chapter VIII - Finance of the Board

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(1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

Explanation I. For the purposes of this Act, "net annual income" shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting therefrom the following, namely:

- (i) the land revenue paid by it to the Government;
- (ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;
- (iii) expenditure incurred for all or any of the following purposes, namely:
  - (a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;
  - (b) seeds or seedlings;
  - (c) manure;
  - (d) purchase and maintenance of agricultural implements;
  - (e) purchase and maintenance of cattle for cultivation;
  - (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations:

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent. of the income derived from lands belonging to the wakf;

- (iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent. of the annual rent derived therefrom, or the actual expenditure, whichever is less;
- (v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are re-invested to earn income for the wakf:

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely:

- (a) advances and deposits recovered and loans taken or recovered;
- (b) deposits made as security by employees, lessees or contractors and other deposits, if any;
- (c) withdrawals from banks or of investments;
- (d) amounts recovered towards costs awarded by courts;

(e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;

(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf;

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income;

(g) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;

(h) audit recoveries.

Explanation II. In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor Ironies, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutions shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular wakf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of the wakf may realise the contributions payable by him under subsection (1) from the various persons entitled to receive any pecuniary or other material benefit from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf;

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of this section:

Provided that no assessment of the net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer under sub-section (6) may prefer an appeal to the Board within thirty days from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the

return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

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### **Section 73 - Power of Chief Executive Officer to direct banks or other person to make payments**

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(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person, as the case may be, shall when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1) or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

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### **Section 74 - Deduction of contribution from perpetual annuity payable to the wakf**

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(1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaries or jagirs, or laying down land ceilings, shall, on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

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### **Section 75 - Power of Board to borrow**

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(1) For the purpose of giving effect to the provisions of this Act, the Board may, with the previous sanction of State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

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### **Section 76 - Mutawalli not to lend or borrow moneys without sanction**

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(1) No mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of wakf for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other wakf property.

(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,

(a) to recover an amount equal to the amount which has been so lent or borrowed, together with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;

(b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

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## **Section 77 - Wakf Fund**

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

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

(3) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Wakf Fund shall be applied to

(a) repayment of any loan incurred under section 75 and payment of interest thereon;

(b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;

(c) payment of the salary and allowances to the Officers and staff of the Board;

(d) payment of travelling allowances to the Chairperson, members, of the Board;

(e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;

(f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

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## **Section 78 - Budget of Board**

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(1) The Board shall in every year prepare, in such form and at such times as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in its budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

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## **Section 79 - Accounts of Board**

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The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

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## **Section 80 - Audit of accounts of Board**

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(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

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

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## **Section 81 - State Government to pass orders on auditor's report**

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The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as it thinks fit..

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## **Section 82 - Dues of Board to be recovered as arrears of land revenue**

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(1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.