

**GOVERNMENT OF WEST BENGAL
LEGISLATIVE DEPARTMENT**

West Bengal Act XIV of 1973

THE BENGAL WAKF (AMENDMENT) ACT, 1973.

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 22nd March, 1973.]

[22nd March, 1973.]

An Act to amend the Bengal Wakf Act, 1934.

Ben. Act
XIII of
1934.

WHEREAS it is expedient to amend the Bengal Wakf Act, 1934, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Twenty-fourth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. This Act may be called the Bengal Wakf (Amendment) Act, 1973. Short title.

2. In the preamble to the Bengal Wakf Act, 1934 (hereinafter referred to as the said Act), after the first paragraph, the following paragraph shall be inserted, namely:— Amendment of the preamble of Ben. Act XIII of 1934.

“AND WHEREAS it is expedient to create a fund for the education of poor and meritorious students professing Islam and reading in any recognised institution;”.

3. In section 3 of the said Act, the proviso shall be omitted. Amendment of section 3.

4. In section 6 of the said Act, after clause (4), the following clause shall be inserted, namely:— Amendment of section 6.

'(4A) “Deputy Commissioner” means the Deputy Commissioner of Wakfs appointed under section 16A;’.

5. In sub-section (2) of section 8 of the said Act,— Amendment of section 8.
 - (a) for clause (a), the following clause shall be substituted, namely:—

“(a) five members to be appointed by the State Government of whom one shall be a Shia and two shall be mutwallis;”;

(Sections 6-8.)

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

“(b) three members to be elected by the West Bengal Legislative Assembly from among the members of the Assembly in accordance with the system of proportional representation by means of the single transferable vote, in the manner prescribed by the State Government;”;

(c) clause (c) shall be omitted;

(d) in clause (d), after the words “State Government”, the following words shall be inserted, namely:—

“of whom one shall be of the Dawoodi Bohra Community”.

Amend-
ment of
section 12.

6. In sub-section (1) of section 12 of the said Act, in clause (d), for the word “six”, the word “three” shall be substituted.

Amend-
ment of
section 16.

7. In section 16 of the said Act,—

(a) after the words “*Official Gazette*”, the words “for such period, not exceeding five years from the date of appointment, as may be specified in the notification, and shall be eligible for re-appointment” shall be inserted;

(b) the words “He shall ordinarily be appointed for five years, and shall be eligible for re-appointment.” shall be omitted.

Insertion of
new sections
16A and
16B.

8. After section 16 of the said Act, the following sections shall be inserted, namely:—

“Appointment of
Deputy
Commissioner.

16A. (1) The State Government may, by notification in the *Official Gazette*, appoint, for such period not exceeding five years from the date of appointment, as may be specified in the notification, a person professing Islam to be the Deputy Commissioner of Wakfs and may, from time to time, by like notification, extend, by such period as it may consider necessary, the period of appointment of the Deputy Commissioner.

(2) Save as otherwise provided in this Act, the Deputy Commissioner shall exercise, perform and discharge such powers, functions and duties of the Commissioner as may be delegated to him by the Commissioner under section 16B.

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(Sections 9-12.)

Delegation of powers, etc., by the Commissioner to the Deputy Commissioner. 16B. Subject to the other provisions of this Act and to such rules as may be made in this behalf by the State Government, the Commissioner may, by order in writing, delegate any of his powers, functions or duties under this Act to the Deputy Commissioner, and in respect of the powers, functions or duties so delegated to the Deputy Commissioner references in this Act to the Commissioner shall be deemed to include references to the Deputy Commissioner.”

9. In section 17 of the said Act. after the word “Commissioner”, the words “or the Deputy Commissioner” shall be inserted. Amendment of section 17.

10. For section 18 of the said Act, the following section shall be substituted, namely:— Substitution of new section for section 18.

“Remuneration of Commissioner and Deputy Commissioner. 18. The Commissioner and the Deputy Commissioner shall receive such monthly salary as may be fixed by the State Government:

Provided that if an officer in the service of the State Government is appointed Commissioner or Deputy Commissioner, he may receive such allowances in addition to the monthly salary as the State Government may fix, and all contributions towards his leave salary and pension required to be paid by him or for him under the conditions of his service under the State Government regulating his transfer to foreign service shall be payable out of the Wakf Fund.”

11. In section 19 of the said Act,—

- (a) in sub-section (1), for the words “to the Commissioner or depute him”, the words “to the Commissioner or the Deputy Commissioner or depute the Commissioner or the Deputy Commissioner” shall be substituted; and
 - (b) in sub-section (2), after the word “Commissioner”, the words “or the Deputy Commissioner” shall be inserted.
- Amendment of section 19.

12. For section 20 of the said Act, the following section shall be substituted, namely:— Substitution of new section for section 20.

“Acting Commissioner. 20. (1) Whenever the Commissioner is granted leave of absence or is deputed to other duties, the Deputy Commissioner, or, if there is no Deputy Commissioner or if the Deputy Commissioner also is granted leave of absence or is deputed to other duties, a person professing Islam appointed by the State Government in this behalf, shall act as the Commissioner until the Commissioner, or the Deputy Commissioner, as the case may be, resumes his duties.

(Sections 13-17.)

(2) The salary of the person appointed under sub-section (1) to act as the Commissioner shall be fixed by the State Government.”.

Amendment
of section
21.

13. In section 21 of the said Act,—

- (a) for the words “the Commissioner has shown”, the words “the Commissioner or the Deputy Commissioner has shown” shall be substituted;
- (b) for the words “the Commissioner shall cease”, the words “the Commissioner or the Deputy Commissioner, as the case may be, shall cease” shall be substituted.

Amendment
of section
23.

14. In section 23 of the said Act, for the words “fees and allowances”, the words “fees, allowances, gratuity and other pecuniary benefits” shall be substituted.

Amendment
of section
26.

15. In section 26 of the said Act, for the words “the Commissioner.”, the words “the Commissioner, the Deputy Commissioner,” shall be substituted.

Amendment
of section
27.

16. In section 27 of the said Act,—

(a) in clause (1),—

- (i) in sub-clause (a), after the words “wakfs and wakf property.”, the words “causing, whenever necessary, a survey of the wakf property” shall be inserted;
- (ii) in sub-clause (d), for the word “wakfs-al-aulad”, the words “every wakf” shall be substituted;
- (iii) after sub-clause (e), the following sub-clause shall be added, namely:—

“(f) creation of an Education Fund for the education of poor and meritorious boys and girls professing Islam reading in schools, colleges and vocational institutions recognised by the State Government.”;

(b) to clause (2), the following proviso shall be added, namely:—

“Provided that no declaration under sub-clause (i) or sub-clause (ii) shall be made without giving the parties affected an opportunity of being heard.”.

Amendment
of section
28.

17. In section 28 of the said Act,—

- (a) for the words “The Commissioner, and the Board”, the words “The Commissioner, the Deputy Commissioner and the Board” shall be substituted;

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(Sections 18-21.)

- (b) after the words "Islamic law", the words "and in general with the provisions of Muhammedan law relating to wakf" shall be added;
- (c) in the proviso, after the words "or changed conditions", the words "so, however, that no such revision shall be made without giving the parties affected an opportunity of being heard" shall be added.

18. For section 40 of the said Act, the following section shall be substituted, namely:—

Substitution of new section for section 40.

40. In the case of any wakf of which there is no mutwalli in certain cases, or where the mutwalli is not available, or the mutwalli is, in the opinion of the Board, not capable of acting as such or where there appears to the Board to be an impediment to the appointment of a mutwalli, the Board may appoint for such period and on such conditions as it thinks fit a person to act as mutwalli."

19. In sub-section (2) of section 47 of the said Act, for the words "six months", the words "three months" shall be substituted.

Amendment of section 47.

20. In section 49 of the said Act,—

Amendment of section 49.

(a) to sub-section (1), the following proviso shall be added, namely:—

"Provided that the accounts of wakfs of which the annual income exceeds five thousand rupees shall be audited by auditors appointed by the State Government.";

(b) in sub-section (5), after the words "Wakf Fund", the following words shall be added, namely:—

"and the cost of audit of the accounts of a wakf by auditors appointed by the State Government shall be paid by the Estate concerned".

21. For sections 53 and 54 of the said Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 53 and 54.

53. (1) Except as provided in sub-section (2), no transfer of any immovable property of a wakf by way of sale, gift, mortgage or exchange or by way of lease for a term exceeding three years shall be valid without the previous sanction of the Board and the Board shall, while according such sanction, see that such transfer is intended for legal necessity.

(Section 21.)

(2) Where such transfer is made under an express power conferred by the wakf deed the previous sanction of the Board shall not be necessary, but a notice of the proposed transfer in such form and containing such particulars as may be prescribed by the Board shall be sent by the mutwalli to the Commissioner one month before the transfer is made.

Board's power to grant sanction to transfer. 54. A mutwalli may apply to the Board for its sanction referred to in section 53 to transfer any immovable property of a wakf, and the Board may, after making such inquiry and giving notice to such persons in such manner as it thinks fit and hearing them if they desire to be heard, accord the sanction applied for on such terms and conditions as it may, in its discretion, impose:

Provided that no such sanction shall be accorded unless it is supported by a majority of not less than two-thirds of the members of the Board present and when the Board has been superseded, by both the Administrator and the Commissioner.

Recovery of wakf property transferred in contravention of section 53. 54A. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, if any immovable property of a wakf entered as such in the register of wakfs maintained under section 45 is transferred after the commencement of the Bengal Wakf (Amendment) Act, 1973, without the previous sanction of the Board in contravention of the provisions of section 53, the Board may, on the application of any person interested in the wakf or of its own motion, after holding an inquiry in such manner as may be prescribed, make an order against the person in possession of such property directing him to deliver possession of such property to the Board, and send the order for execution to the Collector within whose jurisdiction such property is situated:

Provided that no order shall be made under this sub-section—

- (a) except after giving the transferor and the transferee, and any other person in possession of such property, an opportunity of being heard, or
- (b) after more than twelve years from the date of the transfer.

(2) As soon as may be after an order is made under sub-section (1), the Board shall cause a copy of the order to be served on every person referred to in clause (a) of the proviso to that sub-section in such manner as may be prescribed.

(3) On receipt of an order under sub-section (1), the Collector shall issue a notice requiring the person against whom the order has been made to deliver the property to which the order relates to the Board within a period of thirty days from the date of the service of the notice.

(Section 22.)

- (4) Every notice issued under sub-section (3) shall be served—
- (a) by giving or tendering the notice or by sending it by registered post to the person for whom it is intended; or
 - (b) if such person cannot be found, by affixing the notice on some conspicuous part of his last-known place of abode or business, or by giving or tendering the notice 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 notice is to be served is a minor, service upon his guardian shall be deemed to be service upon the minor.

(5) Any person aggrieved by an order of the Board under sub-section (1) may prefer an appeal within sixty days from the date of service of a copy of the order under sub-section (2).

(6) The provisions of section 58A shall apply *mutatis mutandis* to an appeal under sub-section (5).

(7) Where an order made under sub-section (1) 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.

(8) The Board shall deal with any property of which it has recovered possession under this section in such manner as may be prescribed.”.

22. In section 57 of the said Act,—

- (a) in sub-section (1), for the words “five hundred rupees”, the words “one thousand rupees” shall be substituted;
- (b) in sub-section (2), for the words “he shall be punishable with fine which may extend to five hundred rupees”, the words “he shall be punishable with imprisonment either simple or rigorous for a term which may extend to six months or with fine which may extend to one thousand rupees or with both” shall be substituted;
- (c) after sub-section (2), the following sub-sections shall be added, namely:—

“(3) The fines imposed under sub-sections (1) and (2), when realised, shall be credited to the Wakf Fund.

(4) In every case where an offender is convicted of an offence punishable under sub-section (1) or sub-section (2) and sentenced to a fine, the Court shall also

Amendment
of section 57.

(Sections 23, 24.)

award by its sentence such term of imprisonment in default of payment of the fine as is authorised by law in case of such default.”.

Substitution of new sections for section 58.

23. For section 58 of the said Act, the following sections shall be substituted, namely:—

“Removal of mutwalli. 58. (1) Notwithstanding anything contained in any other law for the time being in force, the Board, after giving a mutwalli an opportunity to show cause against the action proposed to be taken, may, if a decision in this behalf is taken by a majority of the total number of members of the Board, by order, remove him from office if such mutwalli—

- (a) has been fined or convicted more than once under section 57; or
- (b) has been convicted of an offence of criminal breach of trust or of any other offence involving moral turpitude; or
- (c) has applied for being adjudged or has been adjudged an insolvent; or
- (d) is of unsound mind or is suffering from any other mental defect or infirmity which would render him unfit for discharging the functions of a mutwalli; or
- (e) has migrated from India.

(2) Where a mutwalli has been removed from office under sub-section (1), the Board may, by order, direct the mutwalli to deliver possession of the wakf property to the Board or to any officer thereof duly authorised by the Board in this behalf or to any person or committee appointed by the Board or other competent authority to act as the mutwalli of the wakf property and such order of the Board shall be deemed to be a decree of a Civil Court and shall be executed by the competent Civil Court as if it had passed the decree.

Appeal. 58A. An appeal from an order of the Board under sub-section (1) of section 58 shall be made within thirty days from the date of the order, before such authority and in such manner as may be prescribed.”.

Amendment of section 59.

24. In section 59 of the said Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The mutwalli of every wakf shall pay annually to the Board a contribution at the rate of six *per centum* of the net available income of the wakf and the mutwalli of every wakf estate having an annual income of five thousand rupees and above shall, in addition to such contribution at six *per centum*, contribute at the rate of two *per centum per annum* of the net available income towards the Education Fund referred to in sub-clause (f) of clause (1) of section 27.”.

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(Sections 25-30.)

- 25.** In sub-section (1) of section 60 of the said Act, after the words "provisions of this Act", the words "and for undertaking development projects" shall be inserted. Amendment of section 60.
- 26.** In section 62 of the said Act,— Amendment of section 62.
- (1) in sub-section (1)—
- (a) in clause (d), after the words "of the Commissioner", the words "the Deputy Commissioner" shall be inserted;
- (b) in clause (e), for the words "to the Commissioner.", the words "to the Commissioner and the Deputy Commissioner and " shall be substituted;
- (2) in sub-section (2), the following words shall be added at the end, namely:—
- "and for granting financial aid for constructing or repairing mosque, or for such other purposes as it may deem fit".
- 27.** For section 69 of the said Act, the following section shall be substituted, namely:— Substitution of new section for section 69.
- "Bar to compromise without sanction of Court and Board. 69. No suit or proceeding by or against a mutwalli as such in any Court shall be compromised without the sanction of such Court and the Board."
- 28.** Section 72 of the said Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:— Amendment of section 72.
- "(2) Notwithstanding anything contained in any law of limitation for the time being in force, a suit or proceeding referred to in sub-section (1), other than a suit or proceeding to recover any money belonging to a wakf, shall not be deemed to have become barred by limitation if such suit or proceeding was not so barred before the 15th day of August, 1947."
- 29.** In sub-section (2) of section 73 of the said Act, after the words "writing of the Commissioner", the words "and for the institution of any such suit, it shall not be necessary to obtain the leave or consent referred to in Acts mentioned in sub-section (1)" shall be added. Amendment of section 73.
- 30.** After section 75 of the said Act, the following section shall be inserted, namely:— Insertion of new section 75A.
- 75A. A mutwalli shall not be entitled to spend funds of the wakf estate of which he is a mutwalli for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceedings for, or incidental to, his removal from office or the taking of any disciplinary action against him:

(Sections 31-35.)

Provided that the mutwalli may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order of the court.”.

Amendment
of
section 84.

- 31.** In sub-section (2) of section 84 of the said Act,—
- (1) after clause (c), the following clause shall be inserted, namely:—
“(cc) the delegation of powers, functions and duties by the Commissioner to the Deputy Commissioner;”,
 - (2) after clause (k), the following clauses shall be inserted, namely:—
“(kk) the manner in which any property referred to in sub-section (8) of section 54A shall be dealt with;
(kkk) the authority before which and the manner in which an appeal shall be made under section 58A;”,
 - (3) after clause (L), the following clause shall be inserted, namely:—
“(ll) any other matter which may be or is required to be prescribed.”.

Amendment
of
section 85.

- 32.** In sub-section (1) of section 85 of the said Act, after clause (f), the following clauses shall be inserted, namely:—
- “(ff) the terms and conditions of service of the officers and employees of the Board including the grounds on which and the extent to which any such officer or employee may be punished;
 - (fff) the payment of gratuity and other pecuniary benefits to the officers and employees of the Board;”.

Amendment
of
section 87.

- 33.** In section 87 of the said Act,—
- (1) after the words “the Commissioner”, the words “, the Deputy Commissioner” shall be inserted;
 - (2) after the words “as Commissioner”, the words “or, as the case may be, a Deputy Commissioner” shall be inserted.

Amendment
of
section 88.

- 34.** In section 88 of the said Act, for the words “The Commissioner, every auditor”, the words “The Commissioner, the Deputy Commissioner, every auditor” shall be substituted.

Amendment
of
section 91.

- 35.** Section 91 of the said Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely:—
- “(2) No Court shall take cognizance of an offence punishable under this Act save upon complaint made by the Commissioner or an officer duly authorised by him in this behalf.”.

(Section 36.)

36. After section 93 of the said Act, the following sections shall be added, namely:—

Addition of
new sections
94, 95 and
96.

“Directions by the State Government. 94. The State Government may from time to time give to the Board such general or special directions as the State Government may think fit and the Board shall, in the performance of its functions, comply with such directions.

Power of State Government to supersede the Board. 95. (1) If, in the opinion of the State Government, the Board—

- (a) has shown its incompetence to perform, or has unreasonably made default in the performance of, the duties or exercise of the functions imposed on it by or under this Act or by any other law, or
- (b) has exceeded or abused its powers,

the State Government may, by an order to be published in the *Official Gazette* stating the reasons therefor, supersede the Board for such period, not exceeding the maximum period of two years, as may be specified in the order:

Provided that the State Government shall, before taking any action under this sub-section, give the Board an opportunity of making any representation against the proposed order.

(2) The State Government may, by order to be published in the *Official Gazette*, subject to the maximum period of two years mentioned in sub-section (1) extend or modify the period of supersession if it considers it necessary so to do.

Consequences of supersession. 96. (1) When an order of supersession has been passed under section 95 then with effect from the date of the order—

- (a) the Commissioner shall cease to be the President of the Board and all members of the Board shall vacate their offices as such members;
- (b) all the powers, duties and functions which, under the provisions of this Act or any rule made thereunder, may be exercised, discharged or performed by the Board, shall be exercised, discharged or performed by such person to be called the Administrator, as may be appointed by the State Government in this behalf.

(2) The State Government shall fix the remuneration of the Administrator and may direct that such remuneration may be paid from the Wakf Fund.

(3) The Administrator shall be a person professing Islam and the Commissioner shall function under the guidance and instruction of the Administrator.

(4) All properties vested in the Board shall vest in the State Government during the period of supersession.

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(Section 37.)

(5) The State Government may, by order to be published in the *Official Gazette*, re-establish the Board.

(6) On the expiry of the period of supersession, the Administrator shall cease to exercise his functions.”.

Repeal and savings.

37. (1) The Bengal Wakf (Amendment) Ordinance, 1972, is hereby repealed.

West Ben. Ord. XVIII of 1972.

(2) Anything done or any action taken under the said Act as amended by the Bengal Wakf (Amendment) Ordinance, 1972, shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 13th day of November, 1972.
