

PARLIAMENT OF CEYLON

1st Session 1956



Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956

Date of Assent : November 7, 1956.

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L. D.—O. 1/55.

AN ACT TO PROVIDE FOR THE REGISTRATION OF MOSQUES, MUSLIM SHRINES AND PLACES OF RELIGIOUS RESORT, TO PRESCRIBE THE POWERS, DUTIES AND FUNCTIONS OF THE TRUSTEES OF REGISTERED MOSQUES, MUSLIM SHRINES, PLACES OF RELIGIOUS RESORT AND MUSLIM CHARITABLE TRUSTS OR WAKFS, TO ESTABLISH A MUSLIM CHARITIES FUND, TO REPEAL CHAPTER II OF THE MUSLIM INTESTATE SUCCESSION AND WAKFS ORDINANCE AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: November 7, 1956.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Muslim Mosques and Charitable Trusts or Wakfs Act, No. 51 of 1956, and the provisions of this Act, other than this section and section 54, shall come into operation on such date (hereinafter referred to as the "appointed date") as the Minister may appoint by Order published in the *Gazette*, and this section and section 54 shall come into operation when this Act becomes an Act of Parliament.

Short title
and date of
operation.

PART I.

THE STAFF AND THE BOARD.

2. (1) There may be appointed for the purposes of this Act a Commissioner for Mosques and Muslim Charitable Trusts or Wakfs and such number of Deputy Commissioners for Mosques and Muslim Charitable Trusts or Wakfs and other officers and servants as may be necessary. Such Commissioner, Deputy Commissioners and other officers and servants shall be servants of the Crown in respect of the Government of Ceylon.

Appointment
of officers
and servants.

(2) A person who is not a Muslim shall not be appointed as the Commissioner or as a Deputy Commissioner.

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Wakfs Act, No. 51 of 1956*

Commissioner
to be subject
to directions
of the Board.

3. The Commissioner shall, in the exercise of his powers and the performance of his duties, be subject to the directions of the Board.

Deputy
Commissioners
may exercise
and perform
Commissioner's
powers and
duties.

4. A Deputy Commissioner may, subject to the direction and control of the Commissioner, exercise any of the Commissioner's powers other than his powers under section 29 (3) and section 39 (1) and perform any of the Commissioner's duties.

The Board.

5. (1) There shall be established for the purposes of this Act a Board which shall be called the Mosques and Muslim Charitable Trusts or Wakfs Board and which shall consist of the Commissioner and seven other members appointed by the Minister.

(2) Every member who vacates his office by effluxion of time shall be eligible for reappointment.

Disqualifica-
tions.

6. A person shall be disqualified for appointment as a member of the Board or if so appointed, shall vacate his office as such if he—

(a) is not a Muslim, or

(b) is, or becomes, a Senator or a Member of Parliament, or

(c) is or becomes a trustee of a registered mosque, a Muslim shrine or place of religious resort or a Muslim charitable trust or wakf.

Term of
office of
members.

7. Every member appointed by the Minister shall, unless he earlier vacates his office, hold office for a period of three years from the date of his appointment:

Provided, however, that every member appointed to fill a vacancy occurring otherwise than by effluxion of time shall hold office for the unexpired portion of the term of office of the member in whose place he is appointed.

Vacation of
office by
members
appointed by
the Minister.

8. A member appointed by the Minister shall vacate his office—

(a) if he is convicted by a competent court of an offence involving moral turpitude; or

(b) if he is adjudged by a competent court to be of unsound mind; or

(c) if, having been adjudged an insolvent or a bankrupt, he has not been granted by a competent court a certificate to the effect that his insolvency or bankruptcy has arisen wholly or partly by unavoidable losses or misfortunes; or

(d) if he absents himself without leave of the Board from three consecutive meetings of the Board; or

(e) if he resigns office by writing under his hand addressed to the Commissioner.

9. (1) The Commissioner shall preside at every meeting of the Board at which he is present. If the Commissioner is absent from any meeting of the Board, the members present at the meeting shall elect one of them to preside at the meeting.

Meetings of,
and dissolution
of, Board.

(2) The quorum for a meeting of the Board shall be three members.

(3) The Commissioner shall not be entitled to vote at a meeting of the Board, unless there is an equality of votes.

(4) Meetings of the Board shall be held at least once in every three months and in addition as frequently as is necessary for the exercise and discharge of its powers and duties under this Act.

(5) No act or proceeding of the Board shall be invalid by reason of any vacancy among its members or any defect in the appointment of any member.

(6) Regulations may be made providing for the procedure to be followed at meetings of the Board. Subject to the provisions of any such regulation, the Board may regulate its own procedure.

(7) If at three consecutive meetings of the Board there is not a sufficient number of members present to form a quorum for the transaction of business, the Minister may dissolve the existing Board.

(8) In the event of a dissolution of the Board—

(a) a new Board shall be constituted in accordance with the provisions of sections 5 and 6; and

- (b) the Commissioner shall, until such time as a new Board is so constituted, exercise the powers and discharge the duties of the Board under this Act.

PART II.

REGISTRATION OF MOSQUES.

Application
for registration
of mosques.

10. (1) The trustee for the time being of a mosque, or if there is no such trustee, the person for the time being in charge of a mosque, opened for public worship before the appointed date shall, within six months after that date, make a written application to the Board for registration of that mosque.

(2) The trustee for the time being of a mosque, or if there is no such trustee, the person for the time being in charge of a mosque, opened for public worship on or after the appointed date shall, within six months after the date on which that mosque is so opened, make a written application to the Board for registration of that mosque.

Board's power
to call for
information
and documents
as to mosques.

11. (1) Upon receipt of an application under section 10, the Board may, by notice served in the prescribed manner, require the applicant to furnish to the Board, within such time as may be specified in the notice, all such information and documents regarding the mosque to which that application relates as the Board may consider necessary.

(2) Every applicant required by notice under subsection (1) to furnish any information and documents to the Board shall furnish such information and documents to the Board within the time specified in that notice.

Register
of Mosques.

12. (1) The Board shall cause a Register of Mosques to be maintained.

(2) The Register of Mosques shall, on payment of the prescribed fee, be open for inspection by any person at any time during which the office of the Commissioner is open for the transaction of business.

Registration
of Mosques.

13. Upon application made to the Board for the registration of a mosque under section 10, and, if the Board has called for information and documents in

respect of that mosque under section 11, upon receipt of such information and documents, the Board, after making such inquiries as it may deem necessary for verifying such information and the particulars contained in the application and in such documents, shall cause that mosque to be registered in the Register of Mosques by the entry therein of the prescribed particulars relating to that mosque.

PART III.

APPOINTMENT, POWERS AND DUTIES OF TRUSTEES OF REGISTERED MOSQUES, &C.

14. (1) As soon as may be, after a mosque has been registered under section 13, the Board shall appoint a person or persons to be a trustee or trustees of that mosque. In selecting a person or persons for appointment as a trustee or trustees of a mosque, the Board shall have regard to the following matters:—

Appointment
of trustees of
mosques, &c.

- (a) the terms of any trust instrument relating to that mosque;
- (b) the religious law and custom of the sect of the Muslim community concerned;
- (c) the local custom with reference to that mosque; and
- (d) the practice and other arrangements in force for the administration of the mosque.

(2) Every person appointed as a trustee by the Board shall officiate as trustee for such period, not exceeding five years, as may be specified in his instrument of appointment, unless he vacates his office under section 15. Every such person on the expiry of his term of office shall be eligible for re-appointment.

(3) Until the Board makes an appointment or appointments under the preceding provisions of this section, the trustee or trustees for the time being of that mosque or, if there is no such trustee, the person for the time being in charge of the mosque shall be responsible for the exercise of all powers and the performance of all duties in connexion with that mosque.

(4) On the Board making an appointment or appointments, the person responsible immediately before such appointment or appointments for the

exercise of powers and the performance of duties in connexion with the mosque shall forthwith hand over all property and documents relating to the mosque to the trustee or trustees appointed by the Board.

Vacation of
office by
trustee and
appointment
of successor.

15. (1) Every trustee of a registered mosque shall vacate his office—

- (a) on death; or
- (b) if he is convicted by a competent court of an offence involving moral turpitude; or
- (c) if he is adjudged by a competent court to be of unsound mind; or
- (d) if, having been adjudged an insolvent or a bankrupt, he has not been granted by a competent court a certificate to the effect that his insolvency or bankruptcy has arisen wholly or partly by unavoidable losses or misfortunes; or
- (e) if he resigns office by writing under his hand addressed to the Commissioner; or
- (f) if the Court directs his removal.

(2) Where a trustee of a registered mosque vacates office, the Board may, taking into account the matters specified in section 14 (1), appoint in his place a new trustee for such period, not exceeding five years, as may be specified in his instrument of appointment.

(3) When a trustee vacates office the other trustees shall, during the continuance of the vacancy, exercise the powers vested in, and perform the duties imposed on, trustees by or under this Act.

Vesting of
property in
the trustee or
trustees of a
registered
mosque.

16. (1) There shall vest in the trustee or trustees of a registered mosque—

(a) any movable or immovable property which—

(i) belongs to, or in any wise appertains to, or is appropriated to the use of, that mosque, or

(ii) is held in trust by, or in the name of, any person exclusively for the benefit of that mosque,

(b) the rents and profits of such property, and

- (c) the offerings and contributions made for the use of, or to the funds of, or for the performance of religious ceremonies at, that mosque,

subject to any lease, charge or encumbrance already affecting that property and to the terms of any trust to which that property may be subject.

(2) All moneys which, under sub-section (1), vest in the trustee or trustees of a registered mosque are in this Act referred to as the income of that mosque.

17. (1) It shall be the duty of the trustee or trustees of a registered mosque, on a direction issued by the Board and subject to the provisions of sub-section (3), to deposit the income of that mosque in a separate account with a bank approved by the Board.

Deposit of
moneys in an
approved bank,
&c.

(2) The bank pass books relating to any account referred to in sub-section (1) shall be open for inspection by the auditor or other person referred to in section 28 at all reasonable times during the day.

(3) Where a direction is issued by the Board for the deposit of the income of a registered mosque in a bank, the trustee or trustees of that mosque shall not retain in his or their possession at any time any sum in excess of one hundred rupees.

18. The income of a registered mosque may, with the previous sanction of the Board, be appropriated by the trustee or trustees of the mosque for all or any of the following purposes:—

The application
of the income
of a registered
mosque.

- (a) the repair and maintenance of the mosque and the premises belonging thereto;
- (b) the remuneration of the persons employed for the purposes of the mosque;
- (c) the performance of religious worship and of all customary religious observances ordinarily performed in the mosque;
- (d) the promotion of religious or secular education at any school maintained in connection with the mosque and the relief of poor students at any such school;
- (e) the relief of the poor, the giving of alms in accordance with custom and the burial of poor Muslims;

(f) the remuneration, as determined by the Board, of the trustee or trustees of the mosque and the payment of all expenses incurred by such trustee or trustees in the exercise of the powers and the performance of the duties of such trustee or trustees;

(g) the payment of compensation awarded under section 21 and the payment of all fees due under this Act in respect of the mosque; and

(h) any other purposes which may be deemed necessary by the jama'ath.

Investment of moneys of mosque.

19. (1) No moneys of a mosque shall be invested in such manner as may earn interest.

(2) Subject to the provisions of sub-section (1), the trustee of a mosque may, with the approval of the Board—

(a) purchase movable or immovable property out of the moneys of the mosque; and

(b) invest such moneys in any other manner.

Restriction on mortgage or other alienation of immovable property of a registered mosque.

20. No immovable property which by section 16 is vested in the trustee or trustees of a registered mosque shall be mortgaged, sold or otherwise alienated except with the approval of the Board.

Recovery of immovable property improperly alienated.

21. (1) Where the Board is satisfied—

(a) that any immovable property belonging to, or held in trust for, any mosque has been mortgaged, sold or alienated prior to the appointed date to the detriment of that mosque; or

(b) that any immovable property which is vested by section 16 in the trustee or trustees of a registered mosque has been mortgaged, sold or alienated contrary to the provisions of this Act,

it shall be the duty of the Board to direct the trustee or trustees of that mosque to institute legal proceedings in a competent court to set aside such mortgage, sale or alienation and to recover possession of the property:

Provided, however, that in the absence of collusion or knowledge between the parties, the court, in setting aside any such mortgage, sale or alienation, shall

award compensation to the mortgagee, vendee, or alienee for any permanent improvements made by him to, or upon, such property.

(2) If legal proceedings in accordance with any direction issued by the Board under sub-section (1) are not instituted by the trustee or trustees of any mosque, the Commissioner or any other person authorised in that behalf by the Board shall be entitled to institute such proceedings.

22. (1) The trustee or trustees of a registered mosque may from time to time lease all or any of the immovable property vested in such trustee or trustees by section 16 for such rent, and upon such conditions, as such trustee or trustees may deem reasonable:

Power to lease immovable property of registered mosque and cancellation of invalid leases.

Provided, however, that—

(a) no trustee shall lease any such immovable property without the previous approval of the Board; or

(b) no lease shall be granted in favour of any trustee of such mosque or in favour of any person in whom any such trustee is directly or indirectly interested.

(2) Any lease granted in contravention of the provisions of sub-section (1) shall be null and void and of no effect in law.

(3) Where the Board is satisfied that any immovable property has been leased in contravention of the preceding provisions of this section, it shall be the duty of the Board, to direct the trustee or trustees of that mosque to institute legal proceedings in a competent court to declare such lease null and void and to recover possession of the property.

(4) If legal proceedings in accordance with any direction issued by the Board under sub-section (3) are not instituted by the trustee or trustees of any mosque, the Commissioner or any other person authorised in that behalf by the Board shall be entitled to institute such proceedings.

23. (1) Where any person who vacates or is removed from or is suspended from the office of trustee of a registered mosque refuses or neglects to deliver any property held or possessed by him for or on behalf

Recovery of possession of property from trustee vacating office.

of that mosque, the trustee or trustees for the time being of that mosque, may institute an action in a competent court for the delivery of possession of such property to the trustee or trustees by whom such action is instituted.

(2) For the purposes of any such action as is referred to in sub-section (1), a certificate in writing by the Commissioner to the effect that any person has vacated or been removed from or been suspended from the office of trustee of a registered mosque shall be conclusive evidence of the facts stated in the certificate.

Proceedings in
actions referred
to in section
23 (1) to be by
way of summary
procedure.
Cap. 86.

24. The proceedings in such actions as are referred to in sub-section (1) of section 23 shall be taken by way of summary procedure and, for the purposes of those sub-sections section 8 of the Civil Procedure Code shall have effect as if for the words "by this Ordinance" occurring therein there were substituted the words "by this Ordinance or by any Act".

Trustee or
trustees of
registered
mosque may sue.

25. (1) The trustee or trustees of a registered mosque may with the approval of the Board sue for the recovery of any property vested in such trustee or trustees under section 16, or for the recovery of the possession of any such property, or for any other purpose connected with, or incidental to, the exercise and performance of the powers and duties of such trustee or trustees.

(2) The trustee of a registered mosque, whether he is the plaintiff or defendant in an action, shall not be personally liable in costs for any act *bona fide* done by such trustee in the exercise of the powers or the performance of the duties of such trustee.

Duty of
trustees to
keep accounts
and maintain
inventories.

26. It shall be the duty of the trustee or trustees of a registered mosque—

- (a) to keep in such form as the Board may direct full and detailed accounts of the income of that mosque and of all expenditure incurred by such trustee or trustees;
- (b) to keep in such form as the Board may direct an inventory of all property for the time being vested in such trustee or trustees; and
- (c) to make such accounts and inventory available for inspection by any member of the Board or by any person authorised by the Board at all reasonable times during the day.

27. (1) It shall be the duty of the trustee or trustees of a registered mosque—

Half-yearly statements of accounts to be sent to the Board.

- (a) to prepare a statement of the accounts, in such form as may be prescribed relating to all the moneys received and expended in respect of that mosque for each half-year ending on the thirtieth day of June and the thirty-first day of December and to sign a declaration at the end of that statement to the effect that those accounts are true and correct;
- (b) to furnish that statement to the Board within a period of thirty days after the end of the half-year to which that statement relates; and
- (c) to exhibit a copy of that statement for a period of thirty days in a conspicuous position in the premises of that mosque.

(2) Every statement of accounts prepared under sub-section (1) shall be in the language in which the accounts of the mosque are usually kept.

28. The Board may cause any accounts specified in a statement furnished to the Board under section 27 to be audited by an auditor, or by any other person, approved by the Board.

Audit of accounts.

29. (1) The Board may, upon a complaint made by any five members of the jama'ath of any registered mosque or of its own motion, hold an inquiry or direct a person authorised by the Board to hold an inquiry into any alleged misfeasance, breach of trust or neglect of duty committed by a trustee of that mosque in respect of any property vested in that trustee or into any failure on the part of that trustee to comply with the provisions of this Act, and where the Board is, after such inquiry, of opinion that proceedings should be instituted as hereinafter provided for the removal of that trustee, the Board may suspend that trustee from office.

Suspension and removal of trustee of mosque.

(2) Where the Board under sub-section (1) has suspended the sole trustee or all the trustees of a registered mosque, the Board shall appoint an interim trustee or trustees to exercise all powers and perform all duties in connection with that mosque under this Act, and such interim trustee or trustees shall exercise

those powers and perform those duties until the Board has made an appointment or appointments under section 15 or the Court has directed the reinstatement of the trustee or trustees suspended by the Board.

(3) Subject to the provisions of sub-section (4), the Commissioner upon direction issued by the Board in that behalf in respect of a registered mosque, or any five persons interested in that mosque, may, without joining as plaintiff any other person so interested, institute an action against a trustee of that mosque in the District Court having jurisdiction in the place in which that mosque is situated, to obtain a decree providing for all or any of the following purposes:—

- (a) directing the specific performance of any act by that trustee;
- (b) declaring that trustee guilty of any misfeasance, breach of trust, or neglect of duty;
- (c) ordering the payment by that trustee of any sum to the funds of the mosque by way of damages in respect of any such misfeasance, breach of trust, or neglect of duty;
- (d) directing the removal from office of that trustee; and
- (e) granting such further or other relief as the circumstances of the case may require.

(4) No action, other than an action instituted by the Commissioner, shall be entertained by the District Court under this section unless the plaint is accompanied by a certificate under the hand of the Commissioner that the action has been approved by the Board.

(5) For the purposes of this section, any member of the jama'ath of a registered mosque shall be deemed to be a person interested in that mosque.

(6) Where five or more persons interested in a mosque has instituted an action under sub-section (3), the withdrawal of one or more than one such person from the action shall not prevent the District Court from continuing and concluding the action so long as at least one person who instituted the action continues to be a party.

30. The provisions of this Part shall, save as expressly provided in this Act, have effect notwithstanding anything contained in any deed or other instrument—

Effect of
Part III.

- (a) relating to the constitution of the office of trustee of any mosque, or the period during which any such trustee shall hold office or the powers and duties of any such trustee, or
- (b) prescribing the purposes for which and the manner in which the income from any property held in trust for the benefit of any mosque may be applied.

PART IV.

APPLICATION OF PROVISIONS RELATING TO MOSQUES TO MUSLIM SHRINES AND PLACES OF RELIGIOUS RESORT.

31. The provisions of Parts II and III shall apply to Muslim shrines and places of religious resort in like manner as they apply to mosques subject to the amendments specified in the Second Schedule hereto.

Application of
Parts II and
III to Muslim
shrines and
places of
religious
resort.

PART V.

MUSLIM CHARITABLE TRUSTS OR WAKFS.

32. (1) The provisions of this Part shall apply to every Muslim charitable trust or wakf created for all or any of the following purposes other than a Muslim charitable trust or wakf which is solely for the benefit of a registered mosque:—

Application
of Part V.

- (a) the relief of poverty among Muslims or any section thereof ;
- (b) the advancement of the education of Muslims or any section thereof ;
- (c) the advancement of Islam generally ;
- (d) the management of any mosque or Muslim shrine or place of religious resort or the performance of religious rites or practices at such mosque, shrine or place; and
- (e) any other purpose beneficial to Muslims or any section thereof.

(2) Where in any instrument in respect of a Muslim charitable trust or wakf created before January 1, 1956, it is expressly declared that the general law relating to trusts shall apply to such trust or wakf, the provisions of this Part shall not apply to such trust or wakf.

Duty of trustees to furnish statements relating to the trusts or wakfs.

33. (1) The trustee or trustees of a Muslim charitable trust or wakf created before the appointed date shall furnish to the Board, within six months after that date, a statement setting out the particulars specified in section 34 in respect of that trust or wakf.

(2) The trustee or trustees of a Muslim charitable trust or wakf created on or after the appointed date shall furnish to the Board, within six months after the date of creation of that trust, a statement setting out the particulars specified in section 34 in respect of that trust or wakf.

(3) Notwithstanding the preceding provisions of this section, the Board may, where the Board is satisfied that the trustee or trustees of a Muslim charitable trust or wakf will be unable to furnish the statement required to be furnished under those provisions within the time allowed by those provisions, allow such trustee or trustees further time for the purpose of furnishing such statement.

The contents of the statements to be furnished under section 33.

34. (1) Every statement required to be furnished under section 33 in respect of a Muslim charitable trust or wakf shall contain the following particulars:—

(a) the name of every person who is a trustee of that trust or wakf and the title under which each such person is entitled to be a trustee;

(b) a description of all the properties subject to that trust or wakf;

(c) the gross amount of the income from such properties for the period of twelve months ending on the date on which the statement is furnished, or, where that trust or wakf was created within that period, the gross amount of the income from such properties after the creation of that trust or wakf;

- (d) the amount of all taxes and rates annually payable to the Crown or to any local authority in respect of such properties;
- (e) an estimate of the average annual expenditure necessary for the realisation of the income from such properties;
- (f) the amount or amounts, if any, set apart under that trust or wakf for each of the following purposes:—
 - (i) the remuneration of every trustee of, and the remuneration of every person employed for the purposes of, that trust or wakf,
 - (ii) contributions to mosques,
 - (iii) other religious and charitable purposes, and
 - (iv) other purposes; and
- (g) such other particulars as may be prescribed.

(2) Every statement of particulars required to be furnished under section 33 in respect of any Muslim charitable trust or wakf shall be accompanied by a copy, certified as a true copy under the hand of the person furnishing that statement, of every deed or other instrument, if any, by which that trust or wakf was created:

Provided, however, that where no such deed or instrument has been executed, or no such copy can be procured, the statement of particulars shall contain all such information as may be within the knowledge of the person or persons furnishing such statement relating to the origin, nature and objects of such trust or wakf.

(3) Every statement of particulars required to be furnished under section 33 shall be signed by the person or persons by whom the statement is furnished and shall contain a declaration that the particulars contained therein are true and accurate. Such declaration shall be free of stamp duty.

35. (1) It shall be the duty of the trustee or trustees of a Muslim charitable trust or wakf to furnish to the Board before the first day of June in each year a statement of accounts in such form as may be prescribed relating to all moneys received and

Duty of trustees to furnish statements of accounts.

expended in respect of that trust or wakf during the period of twelve months ending on the thirty-first day of March of that year:

Provided, however, that where the Board is satisfied that such trustee or trustees will be unable to furnish such statement before the first day of June in that year, the Board may allow such trustee or trustees further time for the purpose of furnishing such statement.

(2) Every statement of accounts furnished under this section shall be signed by the trustee or trustees by whom the statement is furnished and shall contain a declaration that the particulars set out therein are true and accurate. Such declaration shall be free of stamp duty.

(3) Every statement of accounts furnished under this section shall be in the language in which the accounts of the trust or wakf are usually kept.

Audit of
accounts of
trustees.

36. All accounts specified in a statement furnished to the Board under section 35 shall be audited by an auditor, or by any other person, approved by the Board, and shall be accompanied by a report of the person auditing such accounts.

Inspection of
certain
documents.

37. Every statement of particulars furnished under section 33, every statement of account furnished under section 35 and every auditor's report referred to in section 36 shall be open for inspection by any person authorised in writing by the Board at any reasonable time of the day during the prescribed period.

Power of Board
to call for
information or
documents for
verifying
statements and
accounts.

38. Where any statement of particulars or accounts is furnished to the Board under section 33 or section 35, the Board may, by notice, require the person or persons by whom that statement was furnished to furnish such further information or such documents as the Board may require for the purpose of verifying any matter specified in that statement within such period as may be specified in the notice. The person or persons required to furnish information or documents under the preceding provisions of this section shall furnish such information or documents before the expiry of the period specified in the notice.

39. (1) Subject to the provisions of sub-section (2), the Commissioner upon a direction given by the Board in that behalf in respect of a Muslim charitable trust or wakf, or any five persons interested in that trust or wakf, may, without joining as plaintiff any other person so interested, institute an action in the District Court of the district in which the whole or any part of the subject-matter of that trust or wakf is situated, to obtain a decree providing for all or any of the following purposes :—

Commissioner or interested persons to have the power to institute action for enforcing the provisions of a Muslim charitable trust or wakf, &c.

- (a) removing from office any trustee of the trust or wakf;
- (b) appointing, where necessary, a trustee or trustees for the trust or wakf;
- (c) directing the submission of statements of accounts to the Court or the Board;
- (d) declaring what proportion of the property of the trust or wakf or of the interest therein shall be allocated to any specified object of the trust or wakf;
- (e) settling a scheme for the management of the trust or wakf;
- (f) directing the specific performance of any act by the trustee or trustees of the trust or wakf;
- (g) declaring any trustee of the trust or wakf guilty of any misfeasance, breach of trust or neglect of duty;
- (h) ordering the payment by any trustee of the trust or wakf of any sum to the funds of the trust or wakf by way of damages in respect of any misfeasance, breach of trust or neglect of duty;
- (i) enumerating the properties comprised in the trust or wakf; and
- (j) granting such further or other relief as the circumstances of the case may require.

(2) No action other than an action instituted by the Commissioner shall be entertained by the District Court under this section unless the plaint in the action is accompanied by a certificate under the hand of the Commissioner that the action has been approved by the Board.

(3) The interest required in order to entitle any person to be one of the plaintiffs in any action instituted under this section need not be a pecuniary or immediate interest or such an interest as would entitle the person to take any part in the management or superintendence of the trust or wakf.

(4) For the purposes of any action to be instituted on any date under this section, any person who—

- (a) is the donor of any property subject to any Muslim charitable trust or wakf or is a direct male descendant of the donor, or
- (b) in the case of any Muslim charitable trust or wakf created partly for the benefit of a registered mosque, is a member of the jama'ath of that mosque, or
- (c) has, during a period of twelve months preceding that date, received any alms distributed by any trustee of a Muslim charitable trust or wakf or otherwise enjoyed the benefits of that trust or wakf,

shall be deemed to be a person interested in that trust or wakf.

(5) Where five or more persons interested in a Muslim charitable trust or wakf has instituted an action under sub-section (1), the withdrawal of one or more than one such person from the action shall not prevent the District Court from continuing and concluding that action, so long as at least one person who instituted the action continues to be a party.

(6) When a trustee is removed from, or otherwise vacates, office, the other trustees shall, during the continuance of the vacancy, exercise the powers vested in, and perform the duties imposed on, trustees by or under this Act.

Court's powers in settling schemes for the management of Muslim charitable trusts or wakfs.

40. In settling a scheme for the management of any Muslim charitable trust or wakf under sub-section (1) of section 39, the Court may—

- (a) order the inspection of any institution maintained for the purposes of, or in connection with, that trust or wakf by persons authorised by the Court;

- (b) fix as the amount of the annual remuneration of any trustee of that trust or wakf any amount not exceeding ten per centum of the gross annual income of that trust or wakf; and
- (c) direct that any surplus remaining out of the income of that trust or wakf after reasonable provision has been made for carrying out the objects of that trust or wakf shall be applied to such purposes as the Court may consider fit.

41. In settling a scheme for the management of any Muslim charitable trust or wakf under sub-section (1) of section 39 or in determining any question relating to the constitution or existence of any such trust or wakf or the devolution of the trusteeship or the administration of such trust or wakf, the Court shall have regard to the instrument, if any, by which such trust or wakf has been created, the religious law and custom of the sect of the Muslim community concerned, the local custom with reference to such trust or wakf and the practices and other arrangements in force for the administration of such trust or wakf.

Application of religious law, &c.

42. In dealing with any property alleged to be subject to a Muslim charitable trust or wakf, the Court shall not be debarred from exercising any of its powers by the absence of evidence of the formal constitution of such trust or wakf, if the Court is of opinion from all the circumstances of the case that such trust or wakf in fact exists or ought to be deemed to exist.

De facto Muslim charitable trusts or wakfs.

PART VI.

THE MUSLIM CHARITIES FUND.

43. (1) There shall be a Muslim Charities Fund (hereinafter referred to as the "Fund"), and the Fund shall be administered by the Board.

Muslim Charities Fund.

(2) Subject as hereinafter provided, it shall be the duty of the trustee or trustees of each mosque referred to in Part II or Part III, Muslim shrine or place of religious resort referred to in Part IV, or Muslim charitable trust or wakf referred to in Part V, in respect of that mosque, shrine, place, trust or wakf, to pay to the Commissioner in each year to be credited to the Fund, within twenty-one days after the date on which the statement referred to in section 46 is required to be furnished, a contribution on the total

income of that mosque, shrine, place, trust or wakf, less any sums paid out of such income as rates and taxes, during the period of twelve months immediately preceding the thirty-first day of March of that year, calculated at such of the rates specified in the First Schedule to this Act as is appropriate to the case:

Provided, however, that the Board may by Order published in the *Gazette* exempt any such trustee or trustees from the obligation to pay such contribution.

(3) In addition to the contribution referred to in sub-section (2), there shall be credited to the Fund all such sums as may from time to time be paid or bequeathed to the Commissioner as donations to the Fund.

(4) Any contribution payable to the Commissioner under sub-section (2) shall be recoverable in such manner as may be prescribed.

(5) Subject to and in accordance with the provisions of this Part and of any regulations referred to in sub-section (7), the Commissioner shall be responsible for the management of the Fund and for the due application of the moneys and income thereof for such purposes as may be approved by the Board.

(6) All actions and other proceedings in respect of the Fund shall be by or against the Commissioner; and all contracts and other transactions with respect to the Fund shall be entered into by the Commissioner or some officer authorised by the Commissioner for the purpose.

(7) Regulations may be made providing for the manner in which the conditions subject to which the powers, duties and functions assigned to the Commissioner by sub-section (5) shall be exercised and performed.

(8) The accounts of the Fund shall be maintained by or under the direction of the Commissioner and audited by an auditor, or by any other person, approved by the Board and shall be accompanied by a report of the person auditing the accounts.

(9) For the purposes of this section; section 46, and the First Schedule hereto, the total income in respect of a Muslim charitable trust or wakf shall not include income from a mosque or Muslim shrine or place of religious resort.

44. The Board may invest the moneys in the Fund in such manner as may be prescribed.

Investment of moneys in the Fund.

Provided, however, that the Board shall not invest such moneys so as to earn interest.

45. The Board may expend the moneys in the Fund for all or any of the following purposes:—

Expenditure of moneys in the Fund.

- (a) the building, restoration and maintenance of mosques;
- (b) the relief of poverty among Muslims or any section thereof;
- (c) the advancement of the education of the Muslims or any section thereof;
- (d) the advancement of Islam generally;
- (e) any other purpose beneficial to Muslims or any section thereof; and
- (f) the payment of expenditure incurred in the management and administration of the Fund.

PART VII.

GENERAL.

46. (1) It shall be the duty of the trustee or trustees of each mosque referred to in Part II or Part III, Muslim shrine or place of religious resort referred to in Part IV or Muslim charitable trust or wakf referred to in Part V to furnish on or before the first day of June in each year, in addition to any other statement of accounts which is required to be furnished under this Act, a statement specifying the income referred to in section 43:

Duty of trustees to furnish statements of income.

Provided, however, that where the Board is satisfied that such trustee or trustees will be unable to furnish such statement before the first day of June in such year, the Board may allow such trustee or trustees further time for the purpose of furnishing such statement.

(2) Every statement furnished under this section shall be signed by the trustee or trustees by whom the statement is furnished and shall contain a declaration that the particulars set out therein are true and accurate. Such declaration shall be free of stamp duty.

(3) Every statement furnished under this section shall be in the language in which the accounts of the trust or wakf are usually kept.

Additional powers of Court in actions.

47. Where any action is instituted in any District Court under section 29 or section 39, the Court may provide in its decree, in addition to the matters which may be provided for in such decree under section 29 or section 39, for all or any of the following purposes:—

- (a) the submission of accounts by a trustee or trustees in respect of any period not exceeding three years prior to the date on which such decree is made;
- (b) the payment by a trustee or trustees of any sum paid by him or them wrongly to any other person or appropriated by him or them dishonestly to his or their own use;
- (c) the payment by a trustee or trustees of any sum representing a loss to the funds of a registered mosque or a Muslim charitable trust or wakf, such loss being caused by any neglect or omission of such trustee or trustees;
- (d) the deposit by a trustee or trustees of security.

Power of Court to refer matters for arbitration or inquiry.

48. In any action instituted under section 29 or section 39, the Court may—

- (a) on the joint application of the parties to the action, order any matter in dispute between them to be referred for inquiry and decision by one or more arbitrators appointed by the Court, or
- (b) appoint a committee for the purpose of making an inquiry and reporting to the Court in regard to the settlement or adjustment of any matter involved in the action or arising in the course thereof, or for the purpose of assisting the Court in the exercise of its powers under sections 29, 39 and 47.

Powers of arbitrators and committees.

49. (1) Every arbitrator to whom a matter is referred for inquiry under section 48 and every committee appointed under that section shall, without prejudice to any other powers which such arbitrator or committee may possess, have the power—

- (a) to summon any person by written notice to appear before such arbitrator or committee at a date and time specified in the notice;

- (b) to administer oaths or affirmations; and
- (c) to require, by written notice, any person to furnish, orally or in writing, within such period as may be specified in the notice, all such information and documents as such arbitrator or committee may require for the purposes of such inquiry.

(2) Every person summoned by notice to appear before an arbitrator or a committee under sub-section (1) shall appear before that arbitrator or committee, as the case may be, at the date and time specified in that notice.

(3) Every person required by notice to furnish any information and documents before an arbitrator or a committee under sub-section (1) shall furnish such information and documents within the period specified in that notice.

(4) The failure of a person to appear before, or to furnish information and documents to, an arbitrator or a committee, in accordance with the preceding provisions of this section, shall not be deemed a contravention of those provisions, if the arbitrator or committee, as the case may be, is satisfied that such failure is due to an unavoidable cause.

50. No action instituted under section 29 or section 39 shall be a bar to, or be suspended by, any criminal proceedings in any court.

Actions not to bar, or be suspended by, criminal proceedings.

51. Nothing in this Act shall be deemed to preclude the trustee or trustees of a registered mosque, Muslim shrine or place of religious resort or of a Muslim charitable trust or wakf from applying to a competent Court under any provision of the Trusts Ordinance, other than the provisions of sections 100 to 109 (both sections inclusive), for such directions or relief as he or they may be entitled to obtain under such provision, or for obtaining the assistance of such Court for securing the objects of the trust or wakf or for regulating the administration thereof or, except in the case of a registered mosque, shrine or place of religious resort, for regulating the succession to the trusteeship.

Right of trustees to apply to Court for directions or assistance.

Cap. 72.

52. A written statement under the hand of the Commissioner embodying a decision of the Board shall, for the purposes of this Act, be conclusive evidence of such decision.

Commissioner's statement of Board's decision to be conclusive evidence thereof.

Offences.

53. (1) Every person who—

- (a) contravenes any of the provisions of this Act or of any regulation made thereunder, or
- (b) makes to the Commissioner, Board, any arbitrator or Committee for the purposes of this Act any oral or written statement which is to his knowledge false in any material particular,

shall be guilty of an offence under this Act.

(2) Where any two or more persons are the trustees, any information, statement or document required to be furnished under this Act by such trustees may be furnished by one of the trustees, and where such information, statement or document is so furnished, nothing in the preceding provisions of this Act shall be deemed to require any other trustee to furnish such information, statement or document.

(3) Every person guilty of an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

Regulations.

54. (1) The Minister may, with the advice of the Board, make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1), the Minister may, with the advice of the Board, make regulations in respect of all or any of the following matters:—

- (a) all matters authorised or required by this Act to be prescribed;
- (b) the payment of allowances to members of the Board and fees to auditors or other persons auditing accounts for the purposes of this Act, and the rates according to which such allowances or fees are to be calculated; and
- (c) the procedure to be observed at meetings of the Board.

(3) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives. Notification of such approval shall be published in the *Gazette*.

(4) Regulations may be made by the Minister, approved by the Senate and the House of Representatives and published in the *Gazette* under this section before the appointed date, and any regulation so made, approved and published shall not come into operation until the appointed date.

55. Sections 100 to 109 (both sections inclusive) of the Trusts Ordinance shall not apply to any Muslim charitable trust or wakf or any property subject to such trust or wakf.

Non-application of sections 100 to 109 of Trusts Ordinance. Cap. 72.

56. Sections 5 to 24 (both sections inclusive) of the Muslim Intestate Succession and Wakfs Ordinance are hereby repealed.

Repeal. Cap. 50.

57. (1) The Minister may exempt any particular mosque, Muslim shrine, place of religious resort, Muslim charitable trust or wakf or every mosque, Muslim shrine, place of religious resort, Muslim charitable trust or wakf of a particular class or description from all, or any of, the provisions of this Act.

Exemption.

(2) Where an Order has been made under sub-section (1) of this section exempting any particular mosque, shrine, place of religious resort, trust or wakf or every mosque, shrine, place of religious resort, trust or wakf of a particular class or description from all, or any of the provisions of this Act, every person who is required under those provisions to exercise, perform or discharge any power, duty or function in respect of such mosque, shrine, place, trust or wakf shall be exempted from exercising, performing or discharging such power, duty or function.

58. In this Act, unless the context otherwise requires,—

Interpretation.

“ Board ” means the Mosques and Muslim Charitable Trusts or Wakfs Board established under this Act;

“ Commissioner ” means the Commissioner for Mosques and Muslim Charitable Trusts or Wakfs appointed under this Act;

“ Deputy Commissioner ” means any Deputy Commissioner for Mosques and Muslim Charitable Trusts or Wakfs appointed under this Act;

“ jama’ath ”, in relation to a mosque, means the persons who ordinarily worship at, or participate in the religious or customary rites and ceremonies of, that mosque;

“ member ” means a member of the Board;

“ mosque ” includes any thakiyya or zavia;

“ prescribed ” means prescribed by regulation made under this Act; and

“ registered mosque ” means any mosque registered under this Act.

In this Act, except in Parts II and V and in sub-section (3) of section 14, unless the context otherwise requires, “ trustee ”, in relation to a mosque, Muslim shrine or place of religious resort, shall mean a trustee appointed by the Board under this Act.

FIRST SCHEDULE

(SECTION 43 (2))

Rates of contributions to the Muslim Charities Fund

1. The rate of contribution for any year in respect of a registered mosque, Muslim charitable trust or wakf to the Muslim Charities Fund shall,—

(a) where the income of that mosque, Muslim charitable trust or wakf referred to in section 43 in that year is not more than Rs. 1,500, be 1 per centum of that income,

(b) where the income of that mosque, Muslim charitable trust or wakf referred to in section 43 in that year is more than Rs. 1,500 but not more than Rs. 2,500, be 3 per centum of that income, and

(c) where the income of that mosque, Muslim charitable trust or wakf referred to in section 43 in that year is more than Rs. 2,500, be 5 per centum of that income.

2. The rate of contribution for any year in respect of a Muslim shrine or place of religious resort to the Muslim Charities Fund shall be 25 per centum of the income referred to in section 43 of that shrine or place in that year.

SECOND SCHEDULE

Section 31

1. In Parts II and III, there shall be substituted for the word “ mosque ”, wherever that word occurs in those Parts, the words “ shrine or place of religious resort ”.

2. In section 10—

(a) in sub-section (1), there shall be substituted for the words “ opened for public worship ”, the words “ which came into existence as such ”; and

(b) in sub-section (2)—

(i) there shall be substituted for the words “ opened for public worship ”, the words “ which comes into existence as such ”, and

(ii) there shall be substituted for the words “ is so opened ”, the words “ comes into existence ”.

3. In sections 12 and 13, there shall be substituted for the word “ Mosques ”, the words “ Shrines and Places of Religious Resort ”.

4. In section 18 (h), there shall be substituted for the word “ Jama’ath ”, the word “ Board ”.

5. In section 29—

(a) in sub-section (1), there shall be substituted for the words “ members of the Jama’ath of ”, the words “ persons interested in ”;

(b) there shall be substituted for sub-section (5), the following new sub-section:—

“ (5) The interest required in order to entitle any person to be one of the plaintiffs in any action instituted under this section need not be a pecuniary or an immediate interest or such an interest as would entitle the person to take part in the management or superintendence of the shrine or place of religious resort.”; and

(c) there shall be inserted immediately after sub-section (6), the following sub-section:—

“ (7) For the purposes of this section, any person who—

(a) is the donor of any property to the shrine or place of religious resort or is the direct male descendant of the donor, or

(b) has during the period of twelve months immediately preceding that date been in the habit of—

(i) attending such shrine or place, or

(ii) contributing to the payment of any expenditure incurred in connexion with such shrine or place, or

(iii) receiving any alms distributed by any trustee of such shrine or place or otherwise enjoying the benefit thereof,

shall be deemed to be a person interested in the shrine or place.