

# **Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004**

JAMMU & KASHMIR

India

## **Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004**

### **Act 8 of 2004**

- Published on 10 September 2018
- Commenced on 10 September 2018
- [This is the version of this document from 10 September 2018.]
- [Note: The original publication document is not available and this content could not be verified.]

Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004(Act No. 8 of 2004)[Dated 15th January, 2004]A Act to provide for the proper control, efficient management and regulation of the Specified Wakafs, and for the proper protection, preservation and use of the Specified Wakaf Properties, and for matters connected therewith or incidental thereto.Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-fourth Year of the republic of India as follows: -

### **1. Short title and commencement.**

(1)This Act may be called the Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004.(2)It shall be deemed to have come into force with effect from 8th September, 2003.

### **2. Definitions.**

- In this Act unless the context otherwise requires.-(a)"Act" means the Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Act, 2004;(b)"Board" means the Board of Directors established under section 5;(c)"Bye-laws" mean the bye-laws made under section 26;(d)"Chairman" means the Chairman of the Board provided under sub-section (2) of section 6;(e)"Chief Executive" means the Chief Executive appointed under section 18;(f)"Endowment fund" includes -(i)Income and revenue received or receivable on account of any Wakaf or property covered under section 3; and(ii)All such Nazars, donations, offerings as are received on behalf of, or for the benefit of, any Specified Wakaf and Sadqa, Zakat and Usher received

by the Chief Executive or any person authorized by him;(g)"Government" means the Government of Jammu and Kashmir State;(h)"member" means member of the Board and includes its Chairman and Vice-Chairman;(i)"Prescribed" means prescribed under the bye-laws;(j)"Schedule" mean the Schedule appended to the Act;(k)"section" means the section of the Act;(l)"Specified Wakafs" mean the Wakafs specified in Schedule 'A' and such other Wakafs as may be included therein, from time to time, by the Government by notification in the Government Gazette;(m)"Specified Wakaf Properties" mean the properties specified in Schedule 'B' and includes. -(i)the properties (both moveable and immoveable), funds and other assets administered, managed or in possession of any Specified Wakaf or in respect of which any Specified Wakaf claims any title, right or interest ;(ii)all Nazars, Offerings, donations, Sadqa, Zakat and Ushur in any shape, kind or form made by any person and is received or is receivable by any Wakaf at present and which, under this Act, would be receivable by any authorized functionary of the Board ; and(iii)Any other Wakaf property, whether moveable or immoveable, to which the provisions of the Act are applied by the Government, from time to time, by notification in the Government Gazette.(n)"State" means the Jammu and Kashmir State;(o)"Vice-Chairman" means the Vice-Chairman elected/ nominated under section 9;(p)"Wakaf" shall have the same meaning as is assigned to it in Islamic Law generally and under clause (1) of section 3 of the Jammu and Kashmir Wakaf Act, 2001 specifically.

### **3. Application of the Act.**

- The provisions of the Act shall apply to the Specified Wakafs and Specified Wakaf Properties and such other Wakafs or Trusts as may be included in Schedule 'A' or Schedule 'B' by the Government, from time to time, either suo-motu or on the recommendation of the Board :Provided that any Wakaf, Trust or property once included in the Schedule or added thereto, after the commencement of the Act, shall not be de-notified without the written consent of the Board.

### **4. Act to over-ride other laws.**

- The Act shall have effect, notwithstanding anything inconsistent therewith contained in any law or in any scheme of management, decree, order or judgment of any Court, custom, usage, trust deed, instrument or any other deed or agreement.

### **5. Board of Directors.**

(1)The possession, administration, supervision, control and management of the Wakafs and Properties covered under section 3, the Endowment Fund, and the relevant records thereof, shall, with effect from the commencement of the Act, vest in the Board.(2)The Board shall be known as the 'Board of Directors for the Specified Wakafs and Specified Wakaf Properties'. It shall be a body corporate and shall have perpetual succession and a common seal and shall, by the said name, sue and be sued through its Chief Executive.(3)The Board shall be constituted within a period of six months from the date of commencement of the Act and, till then, its powers and functions shall be exercised and discharged by the Chairman:Provided that the Chairman may constitute an interim Board, consisting of not more than five and not less than three persons, to aid and assist him in the discharge of his functions till the regular Board is constituted.

## **6. Composition of Board.**

(1)The Board shall consist of eleven members, all of whom shall be Muslims.(2)The Chief Minister of the State shall be the ex-officio Chairman of the Board and if he happens to be a non-Muslim, he may appoint an eminent Muslim from the Council of Ministers, to be the Chairman. The remaining members shall be nominated by the Chairman as under: -(i)three persons who have distinguished themselves in the service of Islam in the State;(ii)three persons who have distinguished themselves in administrative, legal or financial affairs ;(iii)three persons who have distinguished themselves in health, education and social service; and(iv)A woman who has distinguished herself in the social service particularly in the empowerment of women in the State.[Provided that during the continuation of Proclamation issued under section 92 of the Constitution of Jammu and Kashmir or Article 356 of the Constitution of India as applicable to the State, the Board shall be headed by the Governor who shall be its ex-officio Chairman and if he happens to be a Non-Muslim, he may appoint any eminent Muslim, including from amongst his Advisors in the State, to be the Chairman.] [Added by Jammu and Kashmir Act No. 9 of 2018, dated 10.9.2018.]

## **7. Qualification for membership.**

- A person shall be eligible to be nominated as a member if he:(i)Is a Muslim:(ii)is of sound mind;(iii)is not an insolvent or an undischarged insolvent;(iv)has not converted to any other religion and has not ceased to be a Muslim on any other ground whatsoever; and(v)has not been convicted of any offence involving moral turpitude.

## **8. Term of office, resignation and removal of members and casual vacancies.**

(1)A member, other than an ex-officio member, shall hold office for a period of five years from the date of his nomination but may resign his office earlier by giving notice in writing thereof to the Chairman and shall cease to be a member on the resignation being accepted by the Chairman.(2)The Board may remove from office any member -(a)who is of unsound mind and stands so declared by a competent court;(b)who has applied for being adjudged as an insolvent, or is an un-discharged insolvent;(c)who has converted to any other religion or has ceased to be a Muslim on any ground whatsoever;(d)who has been convicted of any offence involving moral turpitude;(e)who has absented himself consecutively for three meetings of the Board ;(f)Whose presence on the Board would, in the opinion of the Board, be prejudicial to the aims and objectives sought to be achieved under the Act.(3)Casual vacancies among the members shall be filled by nomination made by the Chairman.(4)The term of office of a member appointed to fill a casual vacancy shall be for the remaining period of the term of the member in whose place he is nominated.

## **9. Vice-Chairman.**

(1)The members shall elect the Vice-Chairman from amongst themselves:Provided that pending elections under this sub-section, the Chairman may nominate any member as Vice-Chairman.(2)When the office of the Chairman is vacant, or in the absence of the Chairman

from any meeting, the Vice-Chairman shall perform the functions of the Chairman.(3)In the absence of the Chairman and the Vice-Chairman, a meeting of the Board may be presided over by a member elected by the majority of the members present at the meeting.

## **10. Disputes relating to the eligibility for membership.**

- No Court, except the High Court of judicature of Jammu and Kashmir, shall entertain any suit or proceedings raising a dispute in respect of the eligibility of any member to hold the office under the Act.

## **11. Powers and duties of the Board.**

- The powers and duties of the Board shall be to -(a)administer, manage and regulate the Wakafs and to preserve, protect and use the properties covered under section 3 ;(b)manage and administer the Endowment fund in accordance with the provisions of the Act;(c)pay salaries, allowances and perquisites, and make all other payments due, from the Endowment fund;(d)utilize Endowment fund for the upliftment and empowerment of Muslims in the State, particularly in the areas of education, health, social welfare, commerce and community development;(e)make provisions for relief to the indigent and the destitute.(f)undertake developmental activities for the welfare of Muslims in the State;(g)utilize the Endowment fund for imparting professional, vocational and technical education through establishment of institutions and/or financial assistance to the existing institutions;(h)authorize any officer or employee subordinate to it to exercise such powers, except its powers under sub-section (2) of section 8 and section 25, as the Board may delegate;(i)regulate the entry and presence of the persons in, or on, the Wakafs and the properties covered under section 3 for carrying out the purposes of the Act and the bye-laws made there under ;(j)appoint, suspend or dismiss employees of the Board; and(k)do all such other things as may be necessary, proper incidental or conducive to achieve the objectives of the Act.

## **12. Office and meetings of the Board.**

(1)The Board shall maintain its office at such place as it may decide.(2)The quorum for the meetings of the Board shall be seven:Provided that in case of an interim Board, the quorum shall be three.(3)Every decision of the Board shall, except as expressly provided by the Act or the bye-laws made hereunder, be passed by a majority of votes and, in case of equality of votes, the person presiding a meeting shall have a second or casting vote.(4)The Board shall meet on such occasions, and at such intervals, as may be specified in the bye-laws.

## **13. Board to observe Muslim Law.**

- The Board shall, in the exercise of its powers and the discharge of its duties, follow the rules of Muslim Law whenever applicable and shall ensure that the rites and ceremonies at the Specified Wakafs are conducted in accordance with such law.

#### **14. Defect in the constitution of, or vacancy in, the Board not to invalidate acts and proceedings.**

- No act or proceedings of the Board shall be invalidated merely by reason of the existence of a vacancy among its members or a defect in the constitution thereof.

#### **15. Enforcement of final orders of Board.**

- Where in the exercise of its powers and performance of its duties, the Board passes any final order against any person directing him to do, or to abstain from doing, something the person against whom the order is directed shall be bound to comply with the order and, in case of non-compliance, any Civil Court, within the local limits of whose jurisdiction the person against whom the order has been passed resides or carries on business, may execute the order in the same manner and by the same procedure as if it were a decree or order passed by itself in a suit.

#### **16. Liability of Members.**

- A member shall be liable for the loss, waste or misapplication of the Endowment Fund, if such loss, waste or misapplication is a direct consequence of his willful act or omission while as member and a suit for compensation may be instituted against him by the Board.

#### **17. Appointment of officers and employees of the Board.**

(1) For the efficient discharge of the functions assigned to it under the Act, the Board may appoint such officers and employees as it considers proper and necessary, with such designations, pay, allowances and other remuneration and perquisites as the Board may determine from time to time: Provided that the employees of any Wakaf or Trust, covered under section 3 of the Act, shall continue to be the employees of the Board on the existing terms and conditions until their services are terminated or their service conditions are altered in accordance with the bye-laws: Provided further that the Board may remove any existing employee even before making of bye-laws if in its opinion it is expedient or desirable in the public interest to do so. (2) The Board, shall have the power to transfer, suspend, remove or dismiss any officer or employee of the Board for the breach of discipline, carelessness, unfitness, neglect of duty, misconduct or for any other sufficient cause: Provided that the Board may delegate to the Chief Executive the power to transfer and suspend the officers and employees of the Board: Provided further that where such officer or employee is a Government employee, he may be reverted to his parent department in the Government.

#### **18. Appointment of Chief Executive.**

(1) The Board shall appoint a person to be the Chief Executive of the Wakafs and properties to which the Act applies. He may be appointed directly or hired or borrowed from any other institution, organization or a department of the Government. The Chief Executive shall exercise such powers as

may be specified in the bye-laws and / or delegated to him by the Board:(2)The Chief Executive shall be paid such salary and allowances as the Board may fix from time to time.

## **19. Power to seek and receive offerings.**

(1)It shall be lawful for the Chief Executive, or any person authorized by him in this behalf, to seek and receive, on behalf of the Board, any donations, Nazars, offerings, Sadqa, Zakat and Ushur from any person, and no person, other than the Chief Executive or any person authorized by him in this behalf, shall receive or be entitled to receive such donations, Nazars, offerings, Sadqa, Zakat or Ushur.(2)Whoever solicits or receives any donations, Nazars, offerings, Sadqa, Zakat or Ushur in the name of, or on behalf of the Board or the Chief Executive, in contravention of the provisions of sub-section (1), shall be punishable with fine which may extend to five thousand rupees or double the amount received, whichever is higher.(3)The Chief Executive and the employees of the Board and all other persons authorized to do any act under the Act shall, while acting or purporting to act in pursuance of any of the provisions made by or under the Act, be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

## **20. Performance of the religious practices.**

(1)Notwithstanding anything to the contrary contained in any provision of the Act, any person who was. -(a)performing any religious practices and ceremonies prior to the commencement of the Act, in respect of any Wakaf or Trust covered under section 3, may continue to do so; or(b)entitled to receive or collect any Nazrana or offerings at any Specified Wakaf, prior to the commencement of the Act, may continue to receive and collect such Nazrana or offering:Provided that nothing herein above shall entitle such a person to solicit, coerce, tempt, pester or beg for any such offering or Nazrana from any pilgrim or visitor to any such Wakaf or property.Provided further that any person who claims to be entitled to any privilege or right mentioned in clause (a) or clause (b) of sub-section (1) shall have to establish his title to do so, in accordance with the bye-laws made under the Act, within a period of three months:

### **2.**

) Any person who acts in contravention of sub-section (1) shall be debarred temporarily or permanently by the Board from entering the premises of any Wakaf Trust or Property, covered under section 3, after giving him the opportunity to explain his position. In the event the person is found to have wilfully contravened the provisions, he shall be debarred permanently.

## **21. Audit of accounts, annual report and review audit.**

(1)The accounts of the Wakafs and properties covered under section 3 shall be audited every year by such persons and in such manner as may be prescribed in the bye-laws(2)The Board shall, every year, prepare report on the management and regulation of the Wakafs Trust and properties covered under section 3 which, together with the accounts of the Board and the report of the auditor

thereon, shall be published for information of general public in such manner as may be prescribed in the bye-laws.(3)The Board shall, as soon as possible, after the commencement of the Act, appoint a reputed Chartered Accountant to conduct a review audit of the Specified Wakafs Trusts, Specified Wakaf Properties and the Endowment Fund for the last twenty years:Provided that before making such appointment, the Board shall prepare an inventory of moveable and immoveable properties, assets including cash, cheques, shares, savings and current accounts, deposits etc with any person, Bank or financial institution of the Wakafs and properties covered under section 3:Provided further that in order to carry out the purposes of the Act, the Board may direct any Bank, financial institution, Post Office and other person, group or association of persons not to allow any transaction in respect of such properties and assets except with the prior authority or permission of the Board.

## **22. Recovery of Wakaf property and procedure for eviction.**

- The provisions of sections 44 to 56 (both inclusive) of the J&K Wakaf Act, 2001 shall mutates mutandis apply for recovery of the Wakafs and properties covered under section 3 and eviction of unauthorized occupants thereof subject to the modification that the powers of the Chairman Tehsil Committee and the appellate authority under the said provisions shall be exercised by such person or authority as the Chairman may, from time to time, appoint in this behalf.

## **23. Protection of action taken in good faith.**

- No suit, prosecution or other legal proceeding shall lie against the Board, Chairman, Vice-Chairman, Member, Chief Executive or any other person duly appointed under the Act in respect of anything done, or intended to be done, in good faith in pursuance of the Act or of the bye-laws or any order made there under.

## **24. Penalty.**

- Whoever obstructs, or attempts to obstruct any functionary, official or employee of the Board in the discharge of their duties and function under this Act shall, on conviction before the Judicial Magistrate, be liable to a fine which shall not be less than five thousand rupees and may extend to one lac rupees and/ or imprisonment for a term which may extend to one year but shall not be less than six months.

## **25. Power to remove the difficulty.**

- If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order, give such directions, not inconsistent with the provisions of the Act, as may appear to it to be necessary or expedient for removal of the difficulty:Provided that no such order shall be passed after the expiry of two years from the date of commencement of this Act.

## **26. Bye-laws.**

(1)The Board may make bye-laws for carrying out the purposes of the Act.(2)In particular and without prejudice to the generality of the foregoing powers such bye-laws may provide for: -(a)the distribution of duties among the Chairman, Vice-Chairman and the members;(b)the time and place of, and procedure and conduct of business at, the meetings of the Board ;(c)the facilities admissible and the allowances payable to, the members for attending the meetings and discharge of other functions under the Act;(d)the security, if any, to be taken from the employees of the Board;(e)the books and accounts to be kept at the office of the Board;(f)the custody and investment of the Endowment fund;(g)the details to be included in, or excluded from, the budget of the Board;(h)the persons by whom receipts may be granted for moneys paid to the Board;(i)the maintenance of peace and order in and around the Specified Wakaf and Specified Wakaf Property premises and regulating the entry and conduct of persons within the precincts of any Specified Wakaf and Specified Wakaf Property;(j)the duties and powers of the employees of the Board;(k)the manner for authentication of the decisions and orders of the Board;(l)the manner of terminating the services of any employee;(m)the manner of regulating the service conditions of existing employees;(n)the conditions of service and the manner of entering into contracts by, or on behalf of, the Board; and(o)all other matters expressly required or which may be required to be prescribed for carrying out the purposes of the Act.

## **27. Interpretation.**

- The General Clause Act shall apply in the interpretation and construction of the provisions of the Act.

## **28. Repeal and Savings.**

(1)The Jammu and Kashmir Specified Wakafs and Specified Wakaf Properties (Management and Regulation) Ordinance, 2003 is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act was in force with effect from 8th September, 2003.