A ALL INDIA IMAM ORGANISATION AND ORS.

v.

UNION OF INDIA AND ORS.

[K.RAMASWAMY AND R.M. SAHAI, JJ.]

B

MAY 13, 1993

Wakf Act 1954: Ss 15, 36—Payment of wages to Imams in mosques—Held, it is the responsibility of the Wakf Board—Directions to Union of India and the Central Wakf Board to prepare a scheme within six months for different types of
C *mosques—Constitution of India, Articles 21, 14 and 23.*

A petition was filed in this court by Imams for enforcing their fundamental right against exploitation by Wakf Boards. Their claim was based on the glaring disparity between the nature of work and the amount of remuneration. The petitioners sought a direction to the Central and State Wakf Boards
D **to pay them basic wages. A higher pay scale was claimed for degree holders.**

The Union of India and various State Wakf Boards disputed the manner of their appointment, their right to receive any payment, and absence of any relationship of master and servant. It was variously contended that they were
E **appointed by Mutwallis, or in some cases by the people of the locality where the mosques were situated, and not by the Wakf Boards; that under Islamic religious practice it is voluntary service and there is no entitlement to emoluments; that a certificate from a registered institution is not a necessary requirement for leading in prayer. It was further contended that the Wakf Boards faced financial difficulties.**

F

The Punjab Wakf Board stated that Imams of mosques in Punjab, Haryana and Himachal Pradesh were paid on the basis of their qualification. A pay scale was indicated, and the Imams were paid regularly and treated as regular employees.

G

Allowing the petition, this Court,

HELD : (1) By Section 15 of the Wakf Act, the Wakf Board is vested not only with supervisory and administrative powers over the Wakfs but even the financial power vests in it. One of the primary duties is to ensure that the
H **income from the Wakf is spent on carrying out the purposes for which the**

Wakf was created. Mosques are Wakfs and are required to be registered under the Act over which the Board exercises control. Purpose of their creation is community worship. The principal functionary to undertake it is the Imam. It is the responsibility of the Wakf Board to ensure proper maintenance of religious service in a mosque. To say, therefore, that the Board has no control over the mosque or Imam is not correct. (747-G-H, 748-A) A B

(2) In a series of decisions rendered by this Court it has been held that right to life enshrined in Article 21 means right to live with human dignity. It is too late in the day to urge that since Imams perform religious duties, they are not entitled to emoluments. (748-E) C

(3) Financial difficulties of the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then, it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque, the very purpose for which it is created. (748-H) D

(4) The Union of India and the Central Wakf Board are to prepare a scheme within a period of six months in respect of different types of mosques: (749-B) E

The scheme shall take guidance from the scale of pay prevalent in the State Punjab and Haryana. (749-D)

Mosques under control of the government will not be governed by this order except if their Imams are not paid any remuneration and have no independent means of income. The Government may then fix their emoluments on the basis as the Central Wakf Board may do for other mosques. (749-C) F

G

The State Boards shall ascertain the income of each mosque and the number and nature of Imams required-full time or part time-and their payment is directed. (749-E)

The scheme shall take account of mosques which are small, or in the rural area, or which have no source of income and find H

A **ways to raise income. (749-G)**

The order for payment to Imams shall come into operation from 1 December 1993. Every State Board shall implement the scheme. (749-H, 750-A)

B ORIGINAL JURISDICTION : Writ Petition (c) No. 715 of 1990.

Under Article 32 of the Constitution of India.

Gobinda Mukhoty, R.K. Jain, Yusuf H. Machhale, Ms. K. Amreswari, (N.P) R.N. Sachthey, N.N. Goswamy, Ashwani kumar, Mukesh K.Giri, A.K. Sharma, C B.K. Prasad, (N.P) Ms. Anil Katiyar, Ms. Niranjana Singh, S. Wasim A. Qadri, B.K. Prasad, Nafis Ahmad Siddiqui, Asgar Ali Khan, A.S. Bhasme, E.M.S. Anam, Sakil Ahmed Syed, Anil K. Jha, Raj Kumar Mehta, S.K. Agnihotri, B.R. Jad, Anip Sachthey, Syed Ali Ahmed, Syed Tanweer Ahmad, Mohan Pandey, M. Veerappa, K.H. Nobin Singh S.K. Mehta, Dhruv Mehta, Aman Vachher, P.K. Manohar, B.B. D Singh, Aruneshwar Gupta and R.Mohan for the appearing parties.

The Judgment of the Court was delivered by

R.M. SAHAI, J. Imams, 'incharge of religious activities of the mosque'(1) E have approached this court by way of this, representative, petition under Article 32 of the Constitution for enforcement of fundamental right against their exploitation by Wakf Boards. Relief sought is direction to Central and State Wakf Boards to treat the petitioner as employees of the Board and to pay them basic wages to enable them to survive. Basis of claim is glaring disparity between the nature of work and amount of remuneration. Higher pay scale is claimed for degree holders.

F

Imams perform the duty of offering prayer (Namaz) for congregation in mosques. 'Essentially the mosque is a centre of community worship where Muslims perform ritual prayers and where historically they have also gathered for political, social and cultural functions'. (2) The functions of the mosque is G summarised by the 13th Century jurist Ibn Taymiyah 'as a place of gathering where prayer was celebrated and when public affairs were conducted'. (3) 'All mosques are where Muslim men on an equalitarian basis rich or poor, noble or humble, stand in rows to perform their prayers behind the imam. (4) Imams are expected to look after the cleanliness of mosque, call azans from the balcony of the minarets to the whole religious meetings and propagate the Islamic faith. They are expected to be

H

well versed in the Shariat, the holy Quran, the Hadiths, ethics, philosophy, social, economic and religious aspects. 'Imam or prayer leader is the most important appointee. In the early days the ruler himself filled this role; he was leader (imam) of the government of war, and of the common salat ("ritual prayer"). Under the Abbasids, when the caliph no longer conducted prayers on a regular basis, a paid imam was appointed. While any prominent or learned Muslim can have the honor of leading prayers, each mosque specifically appoints a man well versed in theological matters to act as its imam. He is in charge of the religious activities of the mosque, and it is his duty to conduct prayers five times a day in front of *Mihrab'*. (5) On nature of the duties performed by the imams there is no dispute. But both the Union of India and various State Wakf Boards of different States which have put in appearance in response to the notice issued by this Court have seriously disputed the manner of their appointment, right to receive any payment and absence of any relationship of master and servant. It is stated that the imams or muazzins are appointed by the Mutwallis. According to them the Wakf Boards have nothing to do either with their appointment or working. It is claimed that under Islamic religious practice they are not entitled to any emoluments as a matter of right as the Islamic law ordains the imams to offer voluntary service. They are said to be paid some money out of the donations received in mosques or by the Mutwallis of the Boards. Their job is stated to be honorary and not paid. Nature of duty under Islamic Shariat is stated to lead prayers which is performed voluntarily by any suitable Muslim without any monetary benefit. Some of the affidavits claim that they are appointed by people of the locality. The Union Government has specifically stated that the Islam does not recognise the concept of priesthood as in other religions and the selection of imams is the sole prerogative of the members of the local community or the managing committee, if any, of the mosque. According to Karnataka Wakf Board Imamate in the mosque is not considered to be employment. The allegation of the petitioners that due to meagre payment they are humiliated or insulted in the society, is denied and it is claimed that they are respectable persons who carry on the duty of Imamate as a part of religious activity and not for earning bread and butter. The Delhi Wakf Board pointed out that the honorarium is paid to an imam as a consideration for his five time presence in the mosque regularly and punctually. The Board has denied any right to exercise an authority over the mosque where imams and muazzins are appointed by the mutwallis or by the managing committees. It is stated that holding of a certificate from a registered institution to enable a person to lead the prayer is not necessary as the only requirement for being an imam under the Shariat is to

A B C D E F G

(1) to (5) The Encyclopedia of Religion Vol.10 p-121-122

H

A have a thorough knowledge of the holy Quaran and the rites, rules and obligations required for offering prayers according to the principles laid down by the Kuran and Sunnah. The affidavit filed on behalf of Wakf Board has pointed out that mosque can be categorised in five categories, one, which are under direct control or management of the Government such as Mecca Masjid or the mosque situated in public garden which are not governed or regulated by the Muslim Wakf
B Board; second, mosques which are under the direct management of Wakf Board; third, mosques which are under the control of mutwallis under various Wakfs according to the wishes of the Wakf as the creator of the Wakf; fourth, mosques which are not registered with the Wakf Board and are managed by local inhabitants and are under the management of the public who offer prayers regularly in a
C particular mosque; and fifth, mosques which are not managed by mutwallis or the Muslims of the locality. It is claimed that imams of fourth and fifth category are not regular and any Muslim can lead the prayers, whereas under the third category mosques are having regular imams. Financial difficulty of the Wakf Board to meet the demand has also been pointed out. The Pondicherry Wakf Board has pointed that there is not even one employee except a peon working therein and, therefore,
D it is not possible to meet the demand of the imam. It is also claimed that the Board has no control over the pesh-imams as they are considered to be well dignified personality of the society and they are given due respect by the Muslim community as a whole. In the counter-affidavit filed by the Punjab Wakf Board it has been stated that imams of mosques in Punjab were being paid on basis of their
E qualification. Imams Nazara (Mubtali grade) are in the scale of Rs. 380-20-580-25-830-30-980, whereas Imams Hafiz (Wasti grade) are paid Rs. 445-20-645-25-895-30-1045, and Imam Alim (Muntali grade) are paid Rs. 520-20-720-25-970-30-1120. They are also paid Rs.30 per month medical allowance and muazzins are paid Rs. 310 per month. These scales were revised in 1992. According to them imams of all the mosques in Punjab, Haryana and Himachal Pradesh which come
F under the Punjab Wakf Board are being paid regularly and they are treated as regular employees. The Sunni Central Wakf Board of Uttar Pradesh filed only a written submission stating that all the sunni mosques were managed by mutwallis of the concerned managing committees and not by the Wakf Board.

G The mosque differs from a church or a temple in many respects. 'Ceremonies and service connected with marriages and birth are never performed in mosques. The rites that are important and integral functions of many churches such as confessions, penitences and confirmations do not exist in the mosques. (6) Nor any offerings are made as is common in Hindu temples. 'In Muslims countries mosques are subsidised by the States, hence no collection of money from the
H community is permitted. The Ministry of Wakf (Endowments) appoints the

servant, preachers and readers of the Koran. Mosques in non-Muslim countries are subsidised by individuals. They are administered by their founder or by their special fund. A caretaker is appointed to keep the place clean. The muazzin cells to prayer five times a day from the minaret. (7) In our country in 1954 Wakf Act was passed by the Parliament for better administration and supervision of Wakfs. To achieve the objective of the Act Section 9 provides for establishment of a Wakf Board the functions of which are detailed in Section 15. Sub-section (1) of it reads as under :

> "(1) Subject to any rules that may be made under this Act, the (general superintendence of all wakfs in State in relation to all matters, except those which are expressly required by this Act to be dealt with by the Wakf Commissioner, shall vest) in the Board established for the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the Wakfs under its superintendence are properly maintained controlled and administered and the income thereof is duly applied to the objects and for the purposes for the objects and for the purposes for which such wakfs were created or intended ;
>
> Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the Wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law".
>
> Clause (b) of Sub-section (2) obliges the board "to ensure that the income and other property of a wakf are applied to the objects and for the purposes for which that wakf was created or intended".

The board is vested not only with supervisory and administrative powers over the wakfs but even the financial power vests in it. One of its primary duties is to ensure that the income from the wakf is spent on carrying out the purposes for which wakf was created.

Mosques are wakfs and are required to be registered under the Act over which the board exercises control. Purpose of their creation is community worship. Namaz or Salat is the mandatory practice observed in every mosque. '(Among the Five Pillars (arkan; sg., rukn) of Islam, it holds the second most import, position, immediately after the declaration of faith (shahadah)' (8). The

(6) & (7) Encyclopedia, Britannica Vol. 18 P. 883

(8) The Encyclopedia of Religion Vol. 13 P. 20-21

A principal functionary to undertake it is the Imam. The objective and purpose of every mosque being community worship and it being the obligation of board under the Act to ensure that the objective of the wakf is carried on the Board cannot escape from its responsibility for proper maintenance of religious service in a mosque. To say, therefore, that the Board has no control over the mosque or Imam is not correct. Absence of any provision in the Act or the rules providing for B appointment of Imam or laying down condition of their service is probably because they are not considered as employees. At the same time it cannot be disputed that due to change in social and economic set-up they too need sustenance. Nature of their job is such that they may be required to be present in the mosque nearly for the whole day. There may be some who may perform the duty C as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or profession or service for their livelihood except doing duty as Imam. What should be their fate? Should they be paid any remuneration and if so how much and by whom? According to the Board they are appointed by the mutwallis and, therefore, any payment by the board was out of question. *Prima facie* it is not D correct as the letter of appointments issued in some states are from the Board. But assuming that they are appointed by the Mutwallis the Board cannot escape from its responsibility as the mutwallis too u/s. 36 of the Act are under the supervision and control of the Board. In series of decisions rendered by this Court it has been held that right to life enshrined in Article 21 means right to live with human dignity. E It is too late in the day, therefore, to claim or urge that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept but it has undergone change and even in Muslim countries mosques are subsidised and the Imams are paid their remuneration. We are, therefore, not willing to accept the submission that in our set up or in absence of any statutory provision in the Wakf Act the imams who look after the religious F activities of mosques are not entitled to any remuneration. Much was argued on behalf of Union and the Wakf Boards that their financial position was not such that they can meet the obligations of paying the imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy expenditure which the boards of different States would not be able to bear. We do not find any co-relation between the two. Financial difficulties G of the institution cannot be above fundamental right of a citizen. If the boards have been entrusted with the responsibility of supervision and administering the wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.

H

In the circumstances we allow this petitions and issue following directions A

(i) The Union of India and the Central Wakf Board will prepare a scheme within a period of six months in respect of different types of mosques some detail of which has been furnished in the counter affidavit filed by the Delhi Wakf Board. B

(ii) Mosques which are under control of the Government shall not be governed by this order. But if their imams are not paid any remuneration and they have no independent income. The Government may fix their emoluments on the basis as the Central Wakf Board may do for other mosques in pursuance of our order. C

(iii) For other mosques, except those which are not registered with the Board of their respective States or which are not manned by members of Islamic faith the scheme shall provide for payment of remuneration to such Imams taking guidance from the scale of pay prevalent in the State of Punjab and Haryana. D

(iv) The State Board shall ascertain income of each mosque the number and nature of Imams required by it namely full time or part time.

(v) For the full time Punjab Wakf Board may be treated as a guideline. That shall also furnish guideline for payment to part time imam. E

(vi) In all those mosques where full time Imams are working they shall be paid the remuneration determined in pursuance of this order.

(vii) Part time and honorary Imam shall be paid such remuneration and allowance as is determined under the scheme. F

(viii) The scheme shall also take into account those mosques which are small or are in the rural area or are such as mentioned in the affidavit of Pondichery Board and have no source of income and find out ways and means to raise its income. G

(ix) The exercise should be completed and the scheme be enforced within six months.

(x) Our order for payment to Imams shall come into operation from Ist Dec., H

A 1993. In case the scheme it not prepared within the time allowed then it shall operate retrospectively from 1st December, 1993.

(xi) The scheme framed by the Central Wakf Board shall be implemented by every State Board.

B

The Writ Petition is decided accordingly. Parties shall bear their own costs.

U.R. Petition allowed.