

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay
And
The Hon'ble Justice Murari Prasad Shrivastava.

W.P. No. 358 of 2012
BHARATIYA JANATA PARTY & ANR.
Versus
THE STATE OF WEST BENGAL & ORS.

With

W. P. No. 8662 (W) of 2012
Ganesh Chandra Chakraborty
Vs.
State of West Bengal & Ors.

With

W. P. No. 9163 (W) of 2012
Acharya Jogesh Shastri
Vs.
State of West Bengal & Ors.

With

W.P. No. 11118 (W) of 2012
Abhijit Kumar Chowdhury
Vs.
State of West Bengal & Ors.

For the Petitioner in W.P. 358/2012:

Mr. K Chanda,
Mrs. D. Bharadwaj,
Mr. Debajyoti Adhikari,
Ms. Sumitra Das.

For the State in W.P. 358/2012: Mr. Jayanta Kumar Mitra,
Mr. Tapan Kumar Mukherjee,
Mrs. Debjani Roy.

For the Petitioner in W.P. 8662 (W) of 2012: Mr. C. R. Panda,
Mr. Bimal Kr. Moitra,
Mr. S. K. Nath.

For the State in W.P. 8662 (W) of 2012: Mr. Jayanta Kumar Mitra,
Mr. Tapan Kumar Mukherjee,
Mr. Nilotpal Chatterjee

For the Petitioner in W.P. 9163 (W) of 2012: Mr. Asis Sanyal,
Mr. Sourabh Guha Thakurta,
Mr. Arnab Roy.

For the State in W.P. 9163 (W) of 2012: Mr. Bimal Kr. Chatterjee, Ld. Adv. General,
Mr. Tapan Kumar Mukherjee,
Md. Hasanuz Saman.

For the Petitioner in W.P. 11118 (W) of 2012: Mr. Bikash Ranjan Bhattacharya,
Mr. Samim Ahammed,
Mr. Abhijit Kumar Chowdhury,
Mr. Pinaki Bhattacharya.

For the State in W.P. 11118 (W) of 2012: Mr. Bimal Kr. Chatterjee, Ld. Adv. General,
Mr. Tapan Kumar Mukherjee,
Mr. Nilotpal Chatterjee.

For the Respondent No. 4. : Md. Galib

For the Union of India Mr. Somnath Bose,
Mr. Raj Sekhar Basu.

Heard On: 12.05.2013, 13.05.2013, 15.05.2013 & 17.06.2013.

Judgment On: 02 .09.2013.

PRANAB KUMAR CHATTOPADHYAY, J.

The Constitutional validity of the decisions of the Govt. of West Bengal to grant honorarium to the Imams and Muazzins of different Mosques in the State of West Bengal has been challenged in these writ petitions which have been filed as Public Interest Litigation before this court.

All these writ petitions involve similar facts and identical questions of law. Therefore, the writ petitions were heard analogously and are being disposed of by this common judgment.

In all these writ petitions legality, validity and propriety of the memorandum dated 9th April, 2012 issued by the Department of Minority Affairs & Madrasah Education, Govt. of West Bengal has been challenged whereby the State Government has offered to give honorarium of Rs. 2,500/- per month to Imams through Wakf Boad. Challenge has also been made to the decision of the State Government to pay monthly honorarium of Rs. 1000/- to Muazzins of Mosques. In the case of payment of honorarium to the Muazzins, no government order had been issued.

From the available records, we find that the Ministers of the State Government in the Cabinet Meeting took a decision to pay monthly honorarium of Rs. 1000/- to the Muazzins. In case of Imams however, a memorandum was issued by the Department of Minority Affairs and Madrasah Education, Govt. of West Bengal on 9th April, 2012 whereby

the Government has offered to give honorarium of Rs. 2500/- per month to the Imams. The aforesaid memorandum dated 9th April, 2012 is set out hereunder :-

**“Government of West Bengal
Department of Minority Affairs & Madrasah Education
Writers’ Buildings, Kolkata – 700 001”**

No. 220/SMAME/L/12

Date : 09.04.2012

MEMORANDUM

Imams of Mosques hold a very respectable position in the Muslim Community. They play a leading role in mobilisation of the community for good purposes including health, hygiene, and education and for promotion of various Government Schemes. However, many Imams in respect of West Bengal are living in a very pitiable condition without proper income and educational opportunities for their children due to lack of any initiative on earlier occasion.

The Government has been considering for some time to initiate a package including payment of suitable honorarium to Imams of West Bengal.

The Government in the Department of Minority Affairs & Madrasah Education hereby constitute a ‘Task Force – for welfare of Imams’ headed by Hon’ble Justice (Retd.) Janab Md. Abdul Ghani, Chairperson, Board of Wakf, West Bengal and comprising of following members :-

- 1. Maulana Quari Fazlur Rahman Sb.**
- 2. Maulana Sayed Nurur Rahman Barkati Sb.**
- 3. Peerzada Maulana Md. Toha Siddiqui Sb.**
- 4. Moulana Shafique Quasmi Sb.**
- 5. Maulana Quari Md. Noor Alam Sb.**
- 6. Maulana Sayed Athar Abbas Rizvi Sb. and**
- 7. One Imam from each district – to be nominated by Chairperson, Board of Wakf**
- 8. C.E.O. – Member Convenor**
- 9. G. H. Obaidur Rahman, Joint Secretary, M.A. & M.E. Department as departmental representative.**

The Task Force will utilise the services of District Magistrates, District Officers Minority Affairs, BDOs, E.Os. Of Municipalities as and when required.

The Government has offered to give honorarium of Rs.2,500/ per month to Imams through Wakf Board on receipt of recommendation in this regard from Task Force for welfare of Imams. Payment will be made through Bank Account.

The Task Force will submit its report within 2 (two) weeks regarding payment of honorarium.

The Imams of Mosques not enrolled with Board of Wakf will also be entitled to get this benefit. However, they will have to be registered initially with Board of Wakf for which the Board should start the process immediately. C.E.O., Board of Wakf will assess and send requirement of fund for honorarium and prepare a data base in the following format:

Name of Imam	Contact No.	Period of service and qualification	Name and Bank A/c. No.	Name and full address of Masjid	Land particulars of Masjid	If enrolled with Board/E.C. No.

The Imams of those Mosques established before 1st January, 2012 will only be covered in this scheme.

The Government desires to pay honorarium in terms of this Memorandum with effect from April 14th , 2012 (Baisakh 1, 1419)

Sd/=

**Special Secretary in Charge,
Minority Affairs & Madrasah Education Department”**

Ministers of the West Bengal Government in the Cabinet Meeting held on May 2, 2012 took a decision for payment of monthly honorarium of Rs. 1000/- to the Muazzins. Aforesaid decision of the Cabinet is reproduced hereunder :-

“Decision in Cabinet held on May 02, 2012

**Item No.30 Department: Minority Affairs & Madrasah Education
Subject: Discussion on payment of ‘Honorarium’ to
Muazzins of Mosques.**

Decision: The State Government has already taken a decision, in principle, to pay a monthly honorarium of Rs.2,500/- (Rupees Two thousand and five hundred) only to Imams of mosques through the Wakf Board.

It was felt that the Muazzins who also play an effective role by assisting the Imams in mobilizing the community for implementation of various programmes of the Government should be paid a monthly honorarium of Rs.1,000/- (Rupees one thousand) only, and the payment be made through the Wakf Board.

The proposal was agreed in principle and it was decided that the Department of Minority Affairs & Madrasah Education would send a proposal to Finance Department in this regard.

**Sd/-
(Mamata Banerjee)
Chief Minister/ Presiding Minister”**

The writ petitioners in W.P. No. 358 of 2012 namely, the Bharatiya Janata Party and others challenged the aforesaid memorandum dated 9th April, 2012 on the ground that the same was issued by the Govt. of West Bengal in clear conflict with the decision of the Hon’ble Supreme Court in the case of **All India Imam organization & Ors. Vs. Union of India & Ors.**, reported in **AIR 1993 SC 2086** as well as the subsequent orders

passed by the Hon'ble Supreme Court in connection with the aforesaid judgment.

Mr. Koushik Chanda, learned advocate of the Bharatiya Janata Party submitted that the State Government is making the payment pursuant to the aforesaid memorandum through Wakf Board and the said Wakf Board out of its own fund is not making any payment to the Imams.

Mr. Chanda further submitted that in view of the aforesaid decision of the Hon'ble Supreme Court in the case of **All India Imam organization & Ors.(supra)**, it is the duty of the wakf board to pay honorarium/remuneration to the Imams out of its own fund.

The learned advocate representing the Bharatiya Janata Party also submitted that by issuing the aforesaid memorandum dated 9th April, 2012, the State Government is making payment of the honorarium out of religious considerations which, according to the said learned counsel, offends Articles 14 and 15 (1) of the Constitution of India. Mr. Chanda further submitted that the Hon'ble Supreme Court in the aforesaid case of **All India Imam organization & Ors.(supra)** specifically considered the issue whether the Imams should be paid any remuneration and if so how much and by whom. Mr. Chanda also submitted that while deciding the aforesaid issue, Hon'ble Supreme Court specifically held that it was the duty of the Wakf Board to pay salary to the Imams. Mr. Chanda

relied on Paragraph-5 of the aforesaid decision of the Supreme Court in the case of **All India Imam organization & Ors.(supra)**.

Referring to the aforesaid decision, Mr. Chanda submitted that the Hon'ble Supreme Court in the aforesaid decision specifically directed the Union of India and Central Wakf Board to prepare a scheme for making payment to the Imams upon considering the nature of duty, qualification and category of Mosques to which the said Imams are attached. In terms of the aforesaid judgment of the Hon'ble Supreme Court, a scheme was framed prescribing different pay scales for the Imams in India, according to their duties and qualifications. Thereafter, an application was filed before the Supreme Court in connection with the aforesaid case of **All India Imam organization & Ors.(supra)** and Hon'ble Supreme Court directed to issue notice to each of the States to indicate whether Tribunals under Section 83 of the Wakf Act, 1995 had been constituted and if not then why it had not been so constituted.

Mr. Chanda thereafter relied on the order passed by the Hon'ble Supreme Court on 3rd February, 2003 whereby the Hon'ble Supreme Court disposed of the interlocutory applications filed on behalf of the **All India Imam organization & Ors.(supra)** by directing the said petitioners that if they have any grievance with regard to the implementation of the scheme then it would be open for them to approach the concerned Tribunal which has been established under Section 83 of the Wakf Act, 1995.

Referring to the aforesaid orders Mr. Chanda submitted that it is open to the Imams of West Bengal to apply before the Tribunal for payment of their salary/remuneration, according to the scheme, if not already paid. Mr. Chanda specifically urged before this court that the judgment of the Hon'ble Supreme Court in the aforesaid case of **All India Imam organization & Ors.(supra)** casts an obligation upon the Wakf Board to pay the salary/remuneration to the Imams and the State Government has, therefore, no obligation in this regard. Mr. Chanda submitted that the law laid down by the Hon'ble Supreme Court is the law of the land and the same will prevail over the memorandum issued by the State Government.

Mr. Chanda also submitted that the aforesaid memo dated 9th April, 2012 has been issued pursuant to certain extraneous considerations. The learned advocate of the Bharatiya Janata Party submitted that 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. Imams are the prayer leaders of the Muslim community.

Mr. Chanda, learned advocate of the Bharatiya Janata Party submitted that the Imams are not supposed to participate in the social work as specifically mentioned in the impugned memo dated 9th April, 2012. Mr. Chanda also submitted that the State Government has failed to establish that the Imams in West Bengal ever participated in a

programme for mobilising the Muslim community for health, hygiene and educational activities or for promotion of various government schemes, as mentioned in the said notification dated 9th April, 2012.

Referring to the supplementary affidavit filed on behalf of the State Respondents, Mr. Chanda submitted that the State Respondents have mentioned in the said supplementary affidavit that some Imams in West Bengal along with other groups/persons were invited to promote the pulse polio scheme in some parts of West Bengal although no document was disclosed in support of their actual participation for mobilising the Muslim community in this regard. Mr. Chanda submitted that the reason assigned in the impugned memo for payment of honorarium to the Imams in West Bengal is nothing but a subterfuge.

Mr. Chanda also submitted that the aforesaid memo dated 9th April, 2012 is a classic example of hostile discrimination on the ground of religion which is violative of Article 15 (1) of the Constitution of India. Mr. Chanda specifically submitted that State cannot extend financial benefits by way of payment of honorarium to the prayer leaders of a particular religion to the exclusion of other citizens or for that matter the prayer leaders of other religious communities. According to Mr. Chanda, impugned memo purports to create a religious sub group of Imams and the sub-group has been carved out only on religious lines and not on any other intelligible criteria.

Mr. Chanda also submitted that the impugned memo is also violative of Article 14 of the Constitution of India since the State Government took the decision for providing financial assistance to the Imams in West Bengal by the said memo without considering the relevant facts. Mr. Chanda specifically urged before this court that the State Government took the aforesaid decision and issued the aforesaid memo without considering the decision of the Supreme Court in the case of **All India Imam organization & Ors.(supra)** and the subsequent orders passed by the Hon'ble Supreme Court in connection with the said judgment which are still in force. Mr. Chanda referred to and relied on the decision of the Supreme Court in the case of **M/s. Kasturi Lal Lakshmi Reddy Vs. The State of Jammu & Kashmir and Anr.**, reported in **AIR 1980 SC 1992 Paras 11-15** in support of his arguments.

Mr. Asis Sanyal, learned counsel representing the writ petitioners in W.P. No. 9163 (W) of 2012 submitted that the impugned memo dated 9th April, 2012 has been challenged mainly on the ground that the said memorandum is bad since the State Government is providing financial assistance to some members of a particular religious community which cannot be permitted under the Constitution. Mr. Sanyal submitted that the impugned memo dated 09.04.2012 clearly violates Articles 14, 15 (1), 25 and 27 of the Constitution of India.

Mr. Sanyal also submitted that the State Government failed to show any nexus between the impugned memo and object sought to be achieved by the impugned memo.

Mr. Sanyal submitted that the impugned memo singles out Imam from other poor people of the community and other people who are also doing same Governmental Work as stated in the impugned memo and also in affidavit filed by the State Respondents.

According to the learned counsel of the writ petitioner, State has no legislative competence to issue the impugned memo because neither the State list nor the concurrent list of Seventh Schedule permit the respondent authorities to issue such memo.

Mr. Sanyal submitted that the impugned memo has not been issued under Article 166 of the Constitution of India. Hence, the Government cannot spend any amount on account of payment to the Imams.

Mr. Sanyal further submitted that payment of honorarium to the Imams in West Bengal by the State Government is not a public purpose and therefore, no grant can be made under Article 282 of the Constitution of India. The learned counsel of the writ petitioners submitted that the State cannot take shelter under Article 282 of the Constitution of India in the present case since the impugned memo has not been issued for any public purpose and is totally an unconstitutional one.

Mr. Sanyal submitted that there is no basis for choosing the prayer leaders of a particular religious community in exclusion of others in the matter of providing financial assistance by granting honorarium. According to Mr. Sanyal, it is not at all supported by any reason and therefore, the said decision to provide honorarium to the prayer leaders of a particular religious community is arbitrary and a malafide one which clearly offends Article 14 of the Constitution of India Mr. Sanyal relied on the decision of the Supreme Court in the case of **E. P. Royappa Vs. State of Tamil Nadu and Anr.**, reported in **AIR 1974 SC 555**.

Mr. C. R. Panda, learned advocate for the petitioner in W.P. No. 8662 (W) of 2012 submits that the pitiable condition of the Imams without proper income should be considered and appropriate steps should be taken by the Mutwalis and also by the Wakf Board. Mr. Panda submitted that the State Government cannot provide any financial assistance to the Imams out of Government exchequer.

Mr. Bikash Ranjan Bhattacharya, learned senior counsel appearing on behalf of the petitioners in W.P. No. 11118 (W) of 2012 submitted that the impugned memorandum dated 9th April, 2012 has not been issued in terms of Article 166 of the Constitution of India and therefore, the State Government cannot spend any amount from the said Government exchequer. Mr. Bhattacharya relied on a decision of the Supreme Court in the case of **State of Kerala Vs. Smt. A. Lakshmikutty & Ors.**, reported in **1986 (4) SCC 632**. Mr. Bhattacharya

further submitted that no government order has been issued under Article 166 of the Constitution of India to implement the decision mentioned in the memorandum dated 9th April, 2012 although honorarium has already been paid to the Imams. Mr. Bhattacharya submitted that the aforesaid impugned memorandum has been issued by the State Government on religious considerations and not considering the financial condition of the Imams.

Mr. Bhattacharya, learned advocate submitted that the State Government cannot spend public money for the benefits of the Imams who are the prayer leaders of a particular religious community. It has been specifically urged by Mr. Bhattacharya that no material was available before the Government of West Bengal to arrive at a conclusion regarding necessity to provide government grant for the Imams. Mr. Bhattacharya specifically submitted that the Constitution does not permit spending of money from public exchequer for the benefit of a particular group of persons who are exclusively engaged in religious activities of a particular religious community.

According to Mr. Bhattacharya, impugned decision to pay honorarium to the Imams is violative of Article 14, 15 and 27 of the Constitution of India. Referring to the impugned memorandum dated 9th April, 2012 Mr. Bhattacharya submitted that the Imams are prayer leaders of Muslim Community and do not constitute a separate community. Mr. Bhattacharya also submitted that in the impugned

memorandum dated 9th April, 2012, it has been specifically mentioned that the Imams are living in a very pitiable condition without proper income and educational opportunity for their children due to lack of any initiative on earlier occasion although no material has been placed before the Court in order to establish the aforesaid conclusion.

Mr. Jayanta Mitra, learned senior counsel submitted that the genesis of the decision of the Government to pay honorarium to the Imams and Muazzins is a judgment of the Hon'ble Supreme Court in the case of **All India Imam organization & Ors.(supra)**. Mr. Mitra submitted that the Hon'ble Supreme Court in the aforesaid case having declared that the right of the Imams to receive remuneration from the Board is in the nature of fundamental right and having equated such right with the right to life under Article 21 of the Constitution, any grant made to them by the State is "a public purpose" in terms of Article 282 of the Constitution and, as such, the justifiability of the grant cannot be questioned in a Writ Petition.

It has been argued on behalf of the writ petitioners that providing honorarium to the Imams and/or Muazzins is incurring expenditure for a specified and small section of the community and therefore, it cannot be a public purpose. In order to meet the aforesaid argument, Mr. Mitra relied on a decision of the Privy Council in the case of **Hamabai Framjee Petit Vs. Secretary of State for India**, reported in **AIR 1914 PC 20**.

Mr. Mitra submitted that in the aforesaid case it was contended that when land was taken for construction of residential flats for Government Officials, it could not have been for public purpose because it was not made available for public at large. Mr. Mitra further submitted that the Privy Council repelled such contention by holding that the phrase will include a purpose in which the general interest of the community, as opposed to particular interest of individuals, is directly and vitally concerned.

In this case however, it is to be decided whether the decision of the State Government to pay the honorarium to the Imams and Muazzins is a purpose in which the general interest of the community is directly and vitally concerned.

Mr. Mitra relied on a decision of the Supreme Court in the case of **Rai Sahib Ram Jawaya Kapur Vs. State of Punjab**, reported in **AIR 1955 SC 549** and submitted that the modern State is expected to engage in all activities necessary for the promotion of social and economic welfare of the community. Mr. Mitra also submitted that it is for the State Government to decide what is public purpose. According to Mr. Mitra if the Government spends money for a purpose which it characterises as a public purpose, the proper place to criticize the action of the Government would be the Legislature or the Appropriation Committee and the Courts are not the forum in which the Government action could be criticised or the Government could be restrained.

Mr. Mitra specifically submitted that how to spend money is a part of the executive function of the Government, and it is not permissible for the Court, even under Article 226 of the Constitution, to interfere with such power.

Referring to the aforesaid decisions, Mr. Mitra submitted that Article 282 confers a very wide discretion on the State to decide *what is public purpose and what is not a public purpose*. Mr. Mitra submitted that if the State Government is of the view that the purpose for which the money has been spent or sought to be spent by it is for a public purpose, judicial interference is not permissible on the ground that the money was sought to be spent for a purpose which was not a public purpose or such action was not wise or that the extent of expenditure was not good for the State. All such questions according to Mr. Mitra should be thrashed out in the Legislature, and not in Court.

The learned counsel of the State Respondents submitted that if the court does not approve the expenditure to be incurred or the purpose for which it is incurred, such question cannot be considered by the Court, because every expenditure of the State, if called in question, both as to the nature and extent thereof in a Court of Law, the functioning of the Government itself will be hampered.

Relying on the decision of the Supreme Court in the case of **All India Imam organization & Ors.(supra)**, Mr. Mitra submitted that the honorarium/remuneration of the Imams is a question involving their

fundamental right guaranteed under Article 21 of the Constitution and therefore, the issue of public purpose under Article 282 of the Constitution of India is beyond the pale of controversy and also cannot be the subject matter of a challenge before a Court of Law even under Article 226 of the Constitution.

Referring to the Wakf Act, 1995, Mr. Mitra, learned counsel representing the State Respondents submitted that several provisions of the Wakf Act of 1995 clearly indicate the all-pervasive powers of the State Government in the matter of working of the Boards and utilization of their funds.

Mr. Mitra submitted that in exercise of such power, State Government is entitled to give the directions as contained in the Memorandum dated 9th April, 2012 for the proper functioning of the Wakfs and to make available to the respective Boards funds by way of grants in terms of Article 282 of the Constitution of India.

Referring to the decision of the Hon'ble Supreme Court in the case of **Bhim Singh Vs. Union of India & Ors.**, reported in (2010) 5 SCC 538, Mr. Mitra submitted that the Hon'ble Supreme Court in the aforesaid decision considered the scope and effect of Article 282 of the Constitution.

Mr. Mitra further submitted that in the instant case by the impugned memorandum dated 9th April, 2012 and subsequent orders, State Government sought to provide funds to the Board of Wakfs in the

form of grant for payment to the Imams and Muazzins, in view of their impecunious condition and not having proper income and educational opportunities for their children.

Mr. Mitra submitted that such policy of the Government is in implementation of the Directive Principles as contained in Article 39 (a) and Article 46.

According to Mr. Mitra, State Government is under an obligation to promote the educational and economic interests of the weaker section of the people and also to protect them from social injustice and exploitation. Mr. Mitra, therefore, submitted that when in furtherance of the aforesaid objectives, State Government has decided to pay honorarium to the Imams and Muazzins under Article 282 of the Constitution of India, it cannot be questioned in a Court of Law under Article 226 of the Constitution of India.

Md. Galib, learned counsel appearing on behalf of the Respondent Wakf Board virtually adopted the arguments advanced on behalf of the State Respondents. Mr. Galib submitted that the Board of Wakf, West Bengal has been paying honorarium to the Imams and Muazzins as per the guidelines dated 9th April, 2012 issued by the Department of Minority Affairs & Madrasha Education, Govt. of West Bengal.

Mr. Galib further submitted that the Public Interest Litigations are liable to be dismissed upon considering the specific objections of the

Supreme Court in the case of **Duttaraj Nathuji Thaware Vs. State of Maharashtra & Ors.**, reported in **2005 (1) SCC 590**.

From the aforesaid submissions, a vital question has been raised whether the Constitution permits spending of money from public exchequer for the benefit of some individuals engaged exclusively in religious activity of particular religious community. According to the writ petitioners, impugned decision of the State Government for providing honorarium to the Imams and the subsequent Cabinet decision dated May 2, 2012 for payment of honorarium to Muazzins of mosques are violative of Article 14 and 15 of the Constitution. The Imams are in-charge of religious activity of mosques. It is the duty of the Imams to conduct prayers.

The Imams perform the duty of offering prayer for congregation in the mosques. Hon'ble Supreme Court in the case of **All India Imam organization & Ors.(supra)** specifically considered whether the Imams should be paid any remuneration and if so how much and by whom. The Hon'ble Supreme Court in the aforesaid decision categorically held that the Wakf Boards have been entrusted with the responsibility of supervising and administering the Wakf and it is their duty to harness the resources to pay the Imams who performed the most important duty namely, leading community prayer in a mosque. The relevant extract from the aforesaid decision of **All India Imam organization & Ors.(supra)** is set out hereunder :-

“.....
.....
.....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.”

The Hon’ble Supreme Court in the aforesaid decision also directed the Union of India and the Central Wakf Board to prepare a scheme in respect of different types of mosques for making payment of remuneration to the Imams. **The directions issued by the Supreme Court are set out hereinbelow :**

“6. In the circumstances we allow this petition and issue following directions:

- (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.**
- (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.**
- (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.**

- (iv) **The State Boards 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.**
- (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.**
- (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 Pondicherry Board and have no source of income and find out ways and means to raise its income.**
- (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 1st Dec., 1993. In case the scheme is 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.”**

As a matter of fact, pursuant to the direction of the Hon'ble Supreme Court, a Scheme has already been framed.

The Hon'ble Supreme Court in the aforesaid decision never directed the State Government or the Govt. of India to take the responsibility for making payment to the Imams who are admittedly performing the duty of leading the community prayer in the mosques.

As a matter of fact the Hon'ble Supreme Court in a subsequent order passed on 16th August, 2001 in the aforesaid case of **All India Imam Organisation & Ors. Vs. Union of India & Ors.** specifically recorded that some of the State Wakf Boards were already paying the

salary of the Imam in implementation of the scheme which was formulated pursuant to the order passed earlier in the case of **All India Imam Organisation & Ors. Vs. Union of India & Ors. (supra)**. The relevant extracts from the aforesaid order passed by the Hon'ble Supreme Court of India on 16th August, 2001 in the aforesaid case of **All India Imam Organisation & Ors. Vs. Union of India & Ors.** is set out hereunder :-

“Needless to mention, some of the States Wakf Boards have already been paying the salary of the Imam in implementation of the scheme, namely, Dadar Nagar Haveli, Tamil Nadu, Punjab and Pondicherry.”

Undisputedly, the Imams are the prayer leaders of the Muslim community but the said Imams cannot be classified as a community. In the memorandum dated 9th April, 2012 State Government has also specifically mentioned that the Imams of mosques hold a very respectable position in the Muslim community. Therefore, the Imams are the members of the Muslim community.

In the present case, the grant has been made by the State Government for payment of honorarium to the Imams and Muazzins by exercising power under Article 282 of the Constitution of India. There is no dispute that the State may make any grant under Article 282 for public purpose only. Therefore, it is now to be decided whether the payment of honorarium to the Imams and Muazzins by the State Government can come within the meaning of public purpose.

The learned counsel of the petitioners in all the aforesaid writ petitions have specifically argued that payment of honorarium to the Imams and Muazzins cannot be said to be a public purpose within the meaning of Article 282 of the Constitution of India. The practice of religion is not a public purpose. Religion is purely a personal matter of an individual. Leading the prayer for a particular religious community is not a state function and as such cannot be termed as a public purpose.

In the instant case, specific objection has been raised with regard to payment of honorarium to few individuals of a particular religious community on the ground that the same offends Articles 14 and 15 (1) of the Constitution of India being discriminatory in nature and such discrimination has been made on the ground of religion.

The State Government in the instant case has decided to pay honorarium to few individuals of a particular religious community without considering the financial condition of the similar category of the individuals in the other religious community.

It has been mentioned in the memorandum dated 9th April, 2012 by the State Government that many Imams in West Bengal are living in a very pitiable condition without proper income and educational opportunities for their children. However, no material has been placed on behalf of the State Government in order to establish that many Imams are in a very pitiable condition notwithstanding the fact that the Hon'ble Supreme Court in the case of **All India Imam organization &**

Ors.(supra) specifically directed the Wakf Boards to make payment to the Imams on the basis of the scheme prepared by the Union of India and the Central Wakf Board.

Nothing has been disclosed in the affidavit filed on behalf of the State Respondents nor any document has been produced before this court in order to establish that while taking the impugned decision to pay honorarium to the Imams and Muazzins, the State Government considered the directions issued by the Hon'ble Supreme Court in the case of **All India Imam organization & Ors.(supra)** and subsequent orders passed in relation to the aforesaid matter. The State Government cannot spend any money for the benefit of few individuals of a particular religious community ignoring the identically placed individuals of the other religious communities since the State cannot discriminate on the ground of religion in view of the Article 15 (1) of the Constitution of India.

The State Government by providing funds for making payment of honorarium to the Imams and Muazzins has acted in clear violation of the provisions enshrined under Article 14 and 15 (1) of the Constitution of India.

As mentioned hereinbefore, the State Respondents in the affidavit did not disclose any material in order to establish that many Imams in West Bengal are living in a very pitiable condition without proper income and educational opportunities for their children. Therefore, the impugned decision of the State Government for giving honorarium to the Imams

and Muazzins are based on no materials far less to speak of proper materials. If any decision is taken by the Government on irrelevant consideration and without proper materials then the said decision will be arbitrary in nature and offend Article 14 of the Constitution of India.

In the present case, impugned memorandum dated 9th April, 2012 singles out Imams of the Muslim community, leaving out other members of the various communities who are living in identical financial condition like the Imams. The aforesaid memorandum also singles out Imams from other people, NGO of other religious community who also participated in the meeting organised by and/or on behalf of the State Government for eradicating Polio and other social activities.

No exercise has been made by the Competent Authority of the State Government to ascertain the financial condition of various other members of the Muslim community as well as members of other religious communities before taking the decision for issuing the impugned memorandum.

The public purpose mentioned in Article 282 cannot be a purpose which offends the provisions of Article 14 and 15 (1) of the Constitution of India.

We have no manner of doubt that by the impugned memo dated 9th April, 2012, State Government decided to provide honorarium to few individuals of a particular religious community and the aforesaid

consideration of the State Government for making payment of honorarium is based on religious consideration and nothing else.

Mr. Mitra, learned senior counsel of the State Respondents relied on the decision of the Privy Council in the case of **Hamabai Framjee Petit Vs. Secretary of State for India (supra)** in order to support the decision of the State Government to pay honorarium to the Imams and Muazzins. According to Mr. Mitra, aforesaid decision to pay honorarium to the Imams and Muazzins has been taken by the State Government for a purpose in which the general interest of the community is directly and vitally concerned.

We however, find that Imams and/or Muazzins are few individuals of the Muslim community and attached with the mosques. Decision to provide honorarium to the said individuals cannot serve the general interest of the community as a whole.

In the aforesaid decision, Privy Council specifically held that prima facie the Government are good judges though not absolute judges whether the purpose in the case is one in which the general interest of the community is concerned. The relevant extract from the aforesaid decision of the Privy Council is set out hereunder :-

“That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned. *Prima Facie* the Government are good judges of that. They are not absolute judges.”

[P. 21, C.2]

The aforesaid decision of the Privy Council in the case of **Hamabai Framjee Petit Vs. Secretary of State for India (supra)**, therefore, has no manner of application in the facts of the present case.

As a matter of fact, the impugned decision of the Government will serve the interest of few individuals of the said community. Therefore, incurring expenditure by the State Government for the purpose of providing honorarium to the Imams and/or Muazzins cannot be held to be a public purpose since the general interest of the community is not at all involved.

At the time of argument on behalf of some of the writ petitioners, it has been submitted that the State Government has decided to pay honorarium to the Imams in order to win over the sentiment of the Muslim community and not for the reasons mentioned in the said memorandum, as no material has been disclosed before this court or in the affidavit of the State Respondents in order to justify that the decisions to pay honorarium to Imams and Muazzins were taken for bona fide purpose and not in an arbitrary and mala fide manner.

We find much force in the aforesaid argument. In absence of proper materials, no decision could be taken by the State Government to patronize few individuals of a particular religion by providing honorarium since the same is not only discriminatory in nature but not permissible under Article 15 (1) of the Constitution of India as the State cannot discriminate on the ground of religion.

For the reasons discussed hereinabove, we hold that the impugned memo issued by the State Government is not only discriminatory in nature being violative of Article 14 of the Constitution of India but the same also discriminates on the ground of religion which offends Article 15 (1) of the Constitution of India.

Let us now also consider the provisions made in Article 266 of the Constitution of India.

Article 266 (3) provides :-

“No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.” (Emphasis supplied)

Constitution neither provides nor authorises payment of honorarium to the Imams and Muazzins. Therefore, no money out of the consolidated fund of the State can be utilised for making payment of honorarium to the Imams and Muazzins in terms of Article 266 (3).

Hon'ble Supreme Court in the case of **Sri Divi Kodandarama Saram & Ors. Vs. State of A. P. & Ors.**, reported in **1997 (6) SCC 189** considered the payment of salary to 'Archaka' of Hindu Temple. In the aforesaid decision, Hon'ble Supreme Court made it clear that public fund cannot be utilised for the purpose of making payment of Archakas and trust looking after the temple was advised to collect donation from the public to defray the expenses.

The learned counsel of the State Respondents however, submitted that the Appropriation Act has already been passed for making payment to the Imams and Muazzins and therefore, the said Appropriation Act is the complete answer for incurring expenditure in order to make payment to the Imams and Muazzins by the State Government. Appropriation Act no doubt provides the expenditure made by the State Government and approves or validates the expenditure made by the State Government for a particular year. The said Act, however, cannot justify the validity and/or constitutionality of the purpose for incurring any expenditure specially when such expenditure is not meant for public purpose in terms of Article 282.

It has been argued on behalf of the State Respondents that the State Government is competent to decide what is public purpose. It has also been argued on behalf of the State Respondents that if the State Government spent money for a purpose which the said Government characterises as a public purpose, the proper place to criticise the action of the Government would be the legislature or the Appropriation Committee and the Courts are not the forum in which the Government action could be criticised or the Government could be restrained. The learned senior counsel of the State respondents relied on the following decisions in support of the aforesaid arguments:-

“i.) Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar & Ors., reported in AIR 1961 Bombay 167 Para- 5

ii.) Bira Kishore Mohanty Vs. State of Orissa, reported in AIR 1975 Orissa 8.”

It is now to be decided whether the Appropriation Act validates the decision of the Government to provide honorarium to the Imams and Muazzins from the Consolidated Fund of the State under Article 282 of the Constitution of India.

Appropriation Bill is introduced in the State Assembly to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet the grant so made by the Assembly. The Appropriation Act only authorises the expenditure out of the Consolidated Fund of the State but the same cannot give a direct legislative sanction to the activities for which the expenditure of public funds are incurred. The constitutionality of the activities of the State for which the expenditure of the public funds are incurred can be challenged before a Court of Law and the Court is the competent forum to decide the constitutional validity of the purpose for which the expenditure of public funds have been incurred by the State.

State has incurred expenditure in the instant case from the Consolidated Fund of the State for making grants in order to provide honorarium to the Imams and Muazzins. It has been claimed on behalf of the State Government that the grants made by the State Government for providing honorarium to the Imams and Muazzins are public purpose as contemplated under Article 282 of the Constitution of India.

Mr. Jayanta Mitra, learned counsel for the State Respondents referring to the decision of the Supreme Court in the case of **Rai Sahib Ram Jawaya Kapur Vs. State of Punjab (supra)** submitted that no objection could be raised with regard to the expenditure of the public funds for making payment of honorarium to the Imams and Muazzins since the State Assembly passed the Appropriation Act authorising the aforesaid expenditure from the public funds.

In the aforesaid decision of **Rai Sahib Ram Jawaya Kapur Vs. State of Punjab (supra)**, Hon'ble Supreme Court, however specifically observed that for the purpose of carrying on business, Government do not require any additional power since the power of contract is expressly vested in the Government under Article 298 of the Constitution. The relevant extract from the aforesaid decision is set out hereunder :-

**“18.....
.....For the purpose of carrying on the business the Government do not require any additional powers and whatever is necessary for their purpose, they can have by entering into contracts with authors and other people. This power of contract is expressly vested in the Government under Article 298 of the Constitution.....
.....”**

No provision has however, been made in the Constitution authorising the State Government to make payment of the honorarium to few individuals of a particular religious community. As a matter of fact,

Government cannot spend any money for the benefit of few individuals of a particular religious community to the exclusion of the members of the other religious communities in view of specific provision of Article 15 (1) of the Constitution.

Learned senior counsel of the State respondents relied on the decision of the Bombay High Court in the case of **Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar & Ors. (supra)**.

The law laid down by the Bombay High Court in the case of **Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar & Ors. (supra)** cannot be held to be a good law since in the aforesaid decision, Court has granted unguided power to the State Government to declare any purpose for which the Government purports to spend money as 'public purpose' even in reality the same may not be a public purpose. The relevant extract from the aforesaid decision of the Bombay High Court is set out hereunder :-

**“5.....
.....
.....If
the Government purports to spend
money for a purpose which it
characterises as a public purpose
though in point of fact it is not a
public purpose, the proper place to
criticise the action of the Government
would be the legislature or the
Appropriation Committee. The Courts
are not the forum in which the
Government's action could be sought
to be criticised or restrained.....
.....”**

The identical view taken by the Orissa High Court in the case of **Bira Kishore Mohanty Vs. State of Orissa (supra)** cannot be also approved by us as good law for the identical reasons mentioned hereinabove.

Both the Bombay High Court and the Orissa High Court in the aforesaid decisions did not consider that Article 282 of the Constitution of India authorises a State to make any grant only for public purpose. The State Government cannot by merely characterizing a purpose as public purpose, make a grant unless the State Government can establish that the purpose for which the grant has been made is a public purpose. If a challenge is thrown that the purpose for which the grant has been made by the State is not a public purpose, then the State cannot avoid such challenge by taking the plea that the proper place to challenge the action of the Government would be the legislature or the Appropriation Committee as held by the Bombay High Court and the Orissa High Court in the aforesaid decisions. The court cannot forget that the ordinary members of the public cannot challenge the decision of the Government either before the legislature or before the Appropriation Committee for the simple reason that save and except the members of the Legislative Assembly, no other person is entitled and/or authorised to criticise the action of the State Government in the floor of the State Assembly.

Furthermore, the Government enjoys the majority support in the State Assembly. Therefore, any action of the State Government will be approved by the State Legislature. Lord Diplock has observed in the case of **IRC Vs. Federation of Self-Employed**, reported in **(1981) 2 All ER Page 93 at page 107** as hereunder :-

“It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped
.....It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; **they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge**”.*[Emphasis supplied]*

Therefore, the court is the appropriate forum to decide the constitutional validity and/or legality of any action of the State Government. In the event, the decision of the Government to spend money for a purpose is challenged by a citizen on the ground that the said purpose cannot be said to be a public purpose then the appropriate court will have to adjudicate and decide whether the purpose for which the Government decided to spend money was really a public purpose

since the court can only judge the constitutionality and/or validity of the decision of the State Government and not the legislature as observed by Lord Diplock.

Specific objection has been raised by the learned Senior Counsel of the State and also by the learned counsel of the Wakf Board that the writ petitioners have no *locus standi* to file this bunch of petitions in Public Interest.

This question has been answered very authoritatively by the Constitution Bench of the Supreme Court in the case of **Fertilizer Corporation Kamgar Union (Regd.) Sindri And Others Vs. Union of India And Others** reported in (1981) 1 SCC 568, thus:

“23.....
.....
.....The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations.....
.....
.....”

contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive;.....
.....
.....
.....”

Following the aforesaid decision in the case of **Maneka Gandhi (supra)** Supreme Court further held in the case of **M/s. Kasturi Lal (supra)** that today every governmental action must pass the twin test of reason and relevance.

It is therefore, clear that in view of the aforesaid decisions of the Supreme Court, the jurisdiction of the Writ Court to scrutinise the legality of a governmental action has been expanded. Therefore, the ratio of the judgments of Bombay and Orissa High Court is no longer good law.

Thus the concept of ‘Public Purpose’ becomes justiciable in a court of law. Art. 282 of the Constitution makes it clear that the spending power of Union of India or the State Government, as the case may be, is not co-terminus with legislative power. Nonetheless, the money has to be spent for a public purpose. The concept of public purpose cannot be contrary to the pronounced constitutional value of Secularism. If today the government is allowed to spend out of public exchequer by granting honorarium to the religious leaders of a particular religious community to the exclusion of similar treatment to religious leaders of other religious

communities, such a governmental action being unconstitutional, cannot be said to be for public purpose. Today, in view of the development of the constitutional law, court can arrive at this finding.

Therefore the State will have to justify that the grant has been made for any public purpose when a challenge has been thrown in this regard.

It is well settled that the State can not patronise or favour any particular religion. Secularism is part of the basic structure of our Constitution. The State, therefore, cannot identify itself with or favour any particular religion. The State is under an obligation to offer equal treatment to members of all the religions.

In the case of **S. R. Bommai & Ors. Vs. Union of India & Ors.**, reported in **(1994) 3 SCC 1** Constitution Bench of the Hon'ble Supreme Court observed :-

**“183.....
.....
.....
..... The State does not extend patronage to any particular religion, State is neither pro particular religion nor anti particular religion. It stands aloof, in other words maintains neutrality in matters of religion and provides equal protection to all religions subject to regulation and actively acts on secular part.”**

The State Government by the impugned decisions to provide honorarium to Imams and Muazzins, who are members of a particular religious community, has failed to make equal treatment to all the

religious communities. The State Government did not provide any honorarium to identically placed members of the other religious community and thus, failed to accord equal treatment to all religious communities.

Hon'ble Supreme Court in the case of **All India Imam organization & Ors.(supra)** made it clear that the Wakf Board should be responsible for making payment of salary to the Imams and fund should be generated by the Wakf Board for the said purpose. Supreme Court in the aforesaid case has directed to frame a scheme for making payment to the Imams by the Wakf Board of the respective States although, no direction was issued to the State Government or the Central Government for making any payment to the Imams. **Payment to the Imams by the Wakf Board and the payment to the said Imams by the State Government through the Wakf Board cannot be same.** [*Emphasis supplied*]

In the case of providing honorarium to the Muazzins, no government order has also been issued although the State Government has provided funds to the Wakf Board in order to make payment of honorarium to the Muazzins. No payment could be made on the basis of cabinet decision unless a specific Government order is issued in the name of the Governor in terms of Article 166 of the Constitution of India.

The decision of the State Government to provide honorarium only to some individuals of a particular religious community has

unnecessarily created tension amongst the members of the different religious communities which should be avoided in a secular State.

For the reasons discussed hereinabove, we are constrained to hold that the grants made by the State Government for providing honorarium to the Imams and Muazzins were not for the public purpose as mentioned in Article 282 of the Constitution of India. The impugned memorandum dated 9th April, 2012 issued by the State Government providing monthly honorarium to the Imams through Wakf Board cannot be sustained in the eye of law for the reasons discussed hereinabove. Therefore, the impugned memorandum dated 9th April, 2012 issued by the Government of West Bengal providing monthly honorarium to the Imams is quashed.

The grant made by the State Government for payment of monthly honorarium to the Muazzins also cannot be approved by us since no government order was ever issued for payment of monthly honorarium to the Muazzins apart from the fact that such payment of honorarium is violative of Article 14, 15 (1) and 282 of the Constitution of India. The State Government in a most illegal and irregular manner provided funds to the Wakf Board for making payment of monthly honorarium to the Muazzins even without issuing any government order under Article 166 of the Constitution of India for making such payment to the Muazzins.

The concerned Executives of the State Government have squandered public money by releasing funds to the Wakf Board for the

purpose of making payment of monthly honorarium to the Muazzins even in absence of any government order under Article 166 of the Constitution of India. We take strong exception for spending money even in absence of appropriate government order under Article 166 of the Constitution of India.

We, therefore, allow the writ petitions and quash the decision of the State Government with regard to payment of monthly honorarium to the Imams of the mosques, as mentioned in the impugned memorandum dated 9th April, 2012 and the subsequent decision taken in the meeting of the Cabinet on 2nd May, 2012 for making payment of honorarium to the Muazzins of mosques.

In the facts of the present case, there will be however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

Murari Prasad Shrivastava, J.

I agree.

[MURARI PRASAD SHRIVASTAVA, J.]

LATER:

After pronouncement of the judgment, learned counsel representing the State respondents prays for stay of the operation of the said judgment and order. Similar prayer has also been made on behalf of the respondent Wakf Board. Having heard the learned counsel of the respective parties we, however, find no reason to grant such stay. Therefore, the prayer for stay is refused.

[PRANAB KUMAR CHATTOPADHYAY, J.]

[MURARI PRASAD SHRIVASTAVA, J.]