

(1963) 07 MAD CK 0012

In the Madras High Court

Case No : Second Appeal No. 835 of 1961

Kassimiah Charities Rajagiri

APPELLANT

Vs

Madras State Wakf Board

RESPONDENT

Date of Decision : 05-07-1963

Acts Referred:

Waqf Act, 1954 — Section 25, 3, 3(1), 32

Citation : AIR 1964 Mad 18 : (1964) ILR (Mad) 188 : (1963) 76 LW 629

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Venkataraman, J

Bench : Division Bench

Advocate : K. Rajah Iyer, V. Seshadri and K. Hariharan, for the Appellant; M.M. Ismail and M.A. Sattar Sayeed, for the Respondent

Judgement

Ramachandra Iyer, C.J.—This second appeal has been referred to us in view of the importance of the question involved, namely, "whether a

charitable endowment of a noncommunal character made by a Muslim can be regarded as a wakf within the scope of the Muslim Wakfs Act,

1954". The Courts below have expressed divergent view on the matter. For a due appreciation of the point for determination in the case, it is first

necessary to refer to the terms of the endowment. But before doing so it will be useful to set out a few preliminary facts :

2. Hajee Mohammad Kasim, a resident of Rajagiri in Tanjore Dt. who appears to have been a man of enterprise and who evidently had

enlightened views, acquired considerable properties by his business in foreign countries. In the year 1916, he established at his place a school

known as Madras Kassima for the benefit alike of Muslims and non-Muslim boys. Eight years later he started a free dispensary which again was to

serve the need of sick irrespective of the community to which they belonged. On

7-10-1927, he in order to place the two institutions on a sound footing executed a document styled as "a deed of wakf, otherwise known as a declaration of trust endowing certain properties for their upkeep. Rules were laid down as well, for the management of the institutions. The document declares the intention of the founder that the benefit thereunder should not be restricted to the members of the Muslim community alone. It is not disputed that the foundation thus established by the donor took effect immediately on the execution of the document.

3. After the death of the founder there were complaints about the management of the two institutions by his successors. Certain residents of the locality instituted a suit u/s 92, C. P. C. inter alia for settling a scheme for better management. That litigation ultimately came up to this Court in A.

S. No. 258 of 1943. By the final scheme, as approved by this Court, the management of the charities which came to be designated as "Kassiraia Charities" has been vested in a board of five trustees the office of the managing trustee among them being declared to be hereditary in the family of the founder. The scheme provides that one of the other four trustees should be appointed from among the members of the Hindu community.

4. The scheme has been in operation since then. While so, the Central Legislature enacted the Muslim Wakfs Act (Act 29 of 1954) in order to provide for the better administration of the Muslim wakfs. The enactment came into force in this State by virtue of a notification made thereunder as and from 15-1-1955.

5. The Act provides for the constitution of a wakf board in each State which is to be a body corporate invested with powers of superintendence over all wakfs in the State in order to ensure proper maintenance, control and administration thereof consistent with the directions if any by the founder. Section 25 of the Act makes it obligatory on every wakf being registered at the office of the Wakf Board. The Board is empowered to remove Mutavallis of the wakfs who have been convicted more than once of an offence punishable u/s 41 of the Act. There is power in the Board to fill up vacancies in the office of Mutavalli of wakfs in certain cases. Sections 15 and 42 contain several provisions regarding the functions and powers of the Board; for instance it can settle a scheme for a wakf. There are provisions which enable the Board to conduct enquiries. Central

Government is vested with power to make rules for carrying out the purpose of the Act. The Wakf Board is also given power to make rules and

regulations regarding the conduct of its business, the manner in which the account's of the wakfs are to be kept and the time for and the manner in.

which the submission of budgets by the mutavallis, etc., should be made to the Board. Section 46 casts a liability on every Mutavalli of a wakf to

pay contribution to the Board at such rate not exceeding five per cent of the annual net income, as the Board may subject to the sanction of the

local Government from time to time, determine. In short, the Board as constituted under the Act, is a responsible statutory authority charged with.

the duty of supervising the wakfs in the State.

6. On 28-10-1959 after some previous correspondence on the subject, the Wakf Board of Madras, called upon the Kassimia Charities to have

the wakf registered under the Act and to submit accounts. Alleging that the Kassimia charities will not be a wakf within the purview of the Act, and

that its provisions will have no application to it. the appellant instituted a the suit which has given rise to the present second appeal, praying for

appropriate reliefs. The suit was contested by the Board. The only substantial question at issue in the case was ""Whether the Kassimia charities is a

wakf within the ambit of the Act

7. The trial Court in a careful judgment held that while the endowment would constitute a wakf according to Muslim law, it would not be so under

the Act, as the benefits thereunder had been extended to members of all communities. This judgment has been set aside on appeal. The

correctness of the appellate view is now being challenged in this second appeal before us.

8. For a correct determination of the question involved in the appeal it is necessary first to have an idea of the nature of the endowment. The

document is in Tamil and as stated already, describes itself as a ""a wakf"" meaning ""a declaration of charitable trust"". The nomenclature given by the

donor cannot, of course, be decisive of the question whether the endowment will be a wakf under the Muslim law or under the Act; but even so

the donor's description of it in the instant case can be regarded only as equivocal, for it calls it both a wakf and a declaration of trust.

9. A wakf under the Muhammadan law means a permanent dedication by a

person professing Islamic faith, of properties for any purpose recognised by that law as religious, pious or charitable. A wakf is no doubt the most favourite form and perhaps the most meritorious form of charitable endowment that has been accepted by muslim theologians and lawyers. But it is not essential that a Muslim in order to found a charity should necessarily adopt the form of wakf. He may for example convey his properties to trustees in trust for the particular charitable objects specified by him. The Indian Trusts Act applies to Muslims as well. But a wakf will be created independent of it; the provisions contained therein will not affect the rules of Muhammadan law as to wakfs. In other words a Muslim can endow properties to charities either by adopting his favourite mode of creating a wakf or by endowing property conforming to the law of trusts. The question whether a particular endowment amounts to a wakf under the Muhammadan law or to a trust as recognised by modern jurisprudence, will have to be decided primarily on a true construction of the document establishing the charity. Obviously it has to be decided by looking into the substance rather than the form of it, although in cases of doubt, the form or the nomenclature adopted by the donor will be useful to resolve the doubt. We shall therefore proceed to refer to the material portions of the document: that runs,

I have acquired considerable properties by my own efforts by doing business in foreign countries and with the idea of devoting a part thereof for meritorious purposes, I have been doing several charities. With the object of giving religious instruction to Muslim boys and with the object of giving appropriate secular education to Muslims and non-Muslim boys I established a free school in the year 1916 at Rajagiri for the benefit of the students studying in the school as well as the members of the public belonging to the other communities. I have been conducting since 1924 a free dispensary called Kasimmiah Charitable dispensary. In order to facilitate the conduct of the two charities permanently and improve the same I have given permanently by this document properties specified in Schedules A, B and C to this document which belong to me and which have been in my possession. The two charities have to be conducted from out of the income from the properties in accordance with the rules laid hereunder. I am giving below details in regard to the charities, the manner in which they have got

to be conducted and the persons who are entitled to manage the same...

(3) In Madarasa Kasimiah School which is now being conducted. Muslim boys should be given religious instruction according to tenets of Hanafi school and secular education as well.

(4) The above said school will have to admit twenty five per cent non-Muslim students and they should be given secular education".

(5) The Muslim boys studying in the school should be given compulsory religious education which will render them fit to have knowledge of the first

marga; all the students should be compulsorily taught Urdu language".....

(9) Out of the income from the properties mentioned below after the payment of carar kist, municipal tax, etc. and after incurring expenses in

regard to wages to servants, staff etc., the managing trustee may if he so desires take allowance of Rs. 100 per month as remuneration for his

management. The balance after deducting the expenses aforesaid will be divided into five parts; four parts will be taken into the account of the

Madarasa and the one part to the account of the dispensary and the expenses of the two respective charities should be met therefrom. If there is

any surplus out of the monies set apart to the hospital account, it can be taken over for the purpose of the school".

(10) For the Kasimmiah charitable dispensary a qualified doctor should be appointed, the necessary staff employed and medicines purchased, the

hospital should cater to the needs of all who came there for treatment regardless of their community and treatment should be given to them freely;

the expenses for the above should be met out of the income set apart therefore.".....

(14) This charity will be managed by me so long as I am alive. After my lifetime the senior most male member amongst my descendants will be the

trustee for his life so long as he continues to be the senior member. My female descendants have no right.

(15) For the benefit of the charities and if necessary in the interests of and to the advantage thereof, it. will be competent for me (founder) to make

exchange of properties or to sell them and purchase other properties. But "my descendants will not have this right".

10. It will be seen that the two charities established by the founder are secular in their character and substantially non-communal in regard to the

intended beneficiaries. It is true that in the educational institution, there is restriction in regard to the number of students from other communities.

But it must be noticed that Rajagiri and the neighbouring places have a predominating Muslim population and as the founder was keen about

imparting a knowledge of Arabic and a certain amount of theological study to the young, the reservation of seventy five per cent of the seats to

Muslim students cannot take away the, cosmopolitan nature of the endowment. As we said the dispensary was intended for all irrespective of the

community. The charities must therefore be regarded as not confined to the members of the Muslim community alone. That was perhaps the reason

which induced this court while settling a scheme to provide that there should be a Hindu trustee in the board of management of Kasimiah charities.

11. In form however the deed does not purport to convey the properties to trustees; there is no provision for the vesting of properties in or for the

appointment of any trustee. But at the same time there is reference therein to the management by a trustee (vide paragraph 14). This, however, by

itself cannot be decisive. Having regard to the fact that a Muslim dedicating property to charity generally does so by means of a wakf, we will be

justified in construing the document in the instant case as a wakf if the objects of the endowment can under the Muslim law constitute the subject of

a valid wakf. If, however, they could not be regarded, the endowment can and must be regarded as a trust under the ordinary law.

12. It is contended on behalf of the appellant that as a wakf under the Muslim law is a permanent dedication of property to a charity and as the

mutavalli thereunder is nothing more than a manager, the vesting of a power of alienation by way of exchange or sale under clause 15 of the

document would be inconsistent with the document constituting a wakf under the Muslim law. The contention cannot, however, be accepted. A

dedication to a wakf will not cease to be such merely because a power is reserved in the mutavalli to exchange the wakf lands for other lands or to

sell them and purchase other lands so that the lands so taken in exchange by purchase, might become the subject of the wakf (vide Muhammadan

law by Tyabji 3rd Edn page 567). The terms of the endowment in the present case are even more limited; the power to alienate and substitute

other property is vested only in the founder and those that succeed him in the management have no such power. We cannot therefore see how the

power of sale or exchange vested in the founder can at all be inconsistent with the endowment being a wakf, if otherwise, it is one.

13. The more substantial argument which Mr. Rajah Aiyar urged on behalf of the appellant, is whether a secular charitable endowment of the kind

before us, can at all amount to wakf under the Muslim law. A wakf, it was argued being essentially motivated by a religious belief i. e. a desire to

win divine approbation and thereby approach God, there could be no wakf where non-Muslims were also intended to be the beneficiaries; more

so, it was said as according to the Muslim concept, Hindus were infidels. Secondly, it was argued that the endowment could not be said to benefit

the poor alone, as there was nothing in it which would disentitle the rich from obtaining the benefit therefrom and that it could not therefore be

regarded as a wakf.

14. A wakf, no doubt, is motivated by a religious belief. It can exist only for purposes considered meritorious according to Muslim tenets. Is

charity to Non-Muslims opposed to Muslim faith? Mr. Ameer Ali in his treatise on Muhammadan law, has, however, given a somewhat extended

scope of the term where he said :

Islam is not a necessary condition for the constitution of a wakf. Any person of whatever creed, may create a wakf. but the law requires that the

object for which the dedication is made should be lawful according to the creed of the dedicator as well as the Islamic doctrine. Divine

approbation being the essential element in the constitution of a wakf if the object to which a dedication is made is sinful, either according to the

laws of Islam or to the creed of the dedicator it would not be valid. Consequently, a Muslim cannot make a dedication in favour of an idol, a non-

Muslim place of worship or any other object which is held as unlawful or sinful in his law, nor can a non-Muslim validly make a dedication for a

Muslim place of worship. In Baillie's Digest of Mohammadan law. Volume I. it is stated at page 560 that appropriation by a Muslim or a zime for

a temple or a church or for the poor of the enemy is not valid".

(See Ameer Ali's Mohammadan law, Volume I page 200).

It will appear from the above, that a Muslim as well as a non-Muslim can create a

wakf. That, in order to be valid, should conform to the religion of the founder. If, therefore, the religion of the Prophet does not sanction endowments for the benefit of persons professing other religions there could be no valid wakf by a Muslim for that purpose. It is well known that the Quoran contains stern commandments against idolaters. But it is not very clear whether the idolaters referred to in the holy Quoran means persons other than those mentioned in Surah LXX placitum 23 which referring to idolaters says :

And they have said : Forsake not your Gods Forsake not Wadd, nor suwa, nor Yaghuth and Ya'uq and Nasr.

These have been referred to by Marmaduke Pickthall in his translation of the ""Glorious Quoran"" as the idols of the Pagan Arabs, (see p 489)

Again in Surah V Placitum 82 it is stated :

Thou wilt find the most vehement of mankind in hostility to those who believe (to be) the jews and idolaters. And they will find the nearest: of them

in affection to those who believe (to be) those who say Loi We are Christians. That is because there are among them priests and monks and

because they are not proud"". This passage shows that the Quoran is tolerant of Christianity the reason according to Mr. Marmaduke Pickthall

being that there arc among them, persons entirely devoted to God as much as Muslims themselves. Several other portions of the book show the

stringent prohibitions against idolaters. Therefore, any endowment which contemplates a benefit to an idolater cannot therefore be one sanctioned

by the Muslim law. But a Hindu cannot be regarded as an idolater, though consecrated idols have an important and significant place in the method

of worship and in enabling man to concentrate on the ultimate Reality. Notwithstanding what certain misguided Muslim zealots thought or did in by-

gone times, it appears that the idolaters referred to in the Quoran most have been those amongst the Arabs. It cannot therefore be accepted that

Muslim religion prohibits every kind of charity where non-Muslim is likely to be a beneficiary.

15. Again there appears to exist a well marked distinction in the Muslim law of Wakfs between an endowment made for building and maintaining:

places of worship and those which are purely secular in character. So far as the former types of endowments arc concerned, there can be no wakf

for any alien religion. But in regard to the latter, viz., charities particularly, public utility charities, that law undoubtedly takes a more liberal view.

For example, in regard to donations to neighbours it recognises as valid a wakf in favour of persons who lived adjacent to the donor. In the Digest

of Muhammadan law, Vol. I, page 589 referring to this Mr. Baillie states-----

When a man has made a settlement on his neighbours the produce ought to be expended according to analogy on all who are adjacent to him, but

on a free construction, it is for those who assemble together with him, and come to the musjid or place of worship of the Muhullah or sub-district;

and this is approvedThe neighbour whether Muslim or infidel, male or female, free or mookatab, minor or adult, is entitled and

the produce is to be divided among them according to the number of heads the superintendent, being responsible if he gives more to senile than to

others"".

The same rule has also been stated in Vol. I, of Ameer Ali's Mahommadan law, at page 377. That rule however must be read as limited to

bequests or donations in favour of neighbours, for, we find the rule to be different where appropriations are made for the poor. See Vol. II of

Baillie's Digest of Mohammadan law at page 215, which states -

If a Muslim should make an appropriation for the poor it is to be supplied for the benefit of poor Muslims only to the exclusion of all others; and a

similar appropriation by an infidel is to be applied in like manner to the poor of his own persuasion"". Again in Vol. II of Baillie's Digest of

Mohammadan Law, at p. 575, it is said ""An appropriation for the rich alone is not lawful. An appropriation for travellers is lawful; but it is to be

applied to the poor among them, exclusively of the rich"".

16. It is plain from the passages from authorities extracted above, that to constitute a valid wakf whether religious or charitable, except, in the case

of donations to neighbours the beneficiaries should be muslims; The rigour of the rule has, however, been relaxed in the case of public utilities. We

may refer to the same author at page 200 where we have the following by way of example :

If a well or cistern we're to be put up there will be no objection to taking water from the well or cistern or to watering his cattle and camels and

also using the water for ceremonial ablutions. In the use of all such things there

is no difference! between the rich and the poor.

Mr. Ameer Ali has recognised three classes of wakfs according to Hanafi law the second of them being for the rich and the indigent alike. He says-

The second class includes wakfs in favour of objects in the benefit of which both rich and poor may participate, e.g. mosques, caravanserais, rest

houses, reservoirs, shrines, hospitals, colleges, cemeteries, etc. (see page 206).

Earlier at page 201 the learned author says :

According to the Har-ur-Raik it is lawful for a Moslem to create a wakf in favour of the non Muslim poor and destitute. .Similarly he can endow a

school for the education of non-Moslem children and vice versa"".

Public utilities have been recognised by Muslim law as charitable, notwithstanding the fact that some of those who take the benefit thereunder might

be non-Muslims or rich people. There can therefore be a valid wakf for the establishment of a public utility, e. g. an educational institution for

providing instructions to non-Muslims It is not necessary that the benefits should be confined to the poor alone so far as such charities arc

concerned. Viewed thus, the endowment in question in this appeal, would be a wakf as understood in the common law of Muslims.

17. But the more important question to be. decided is, whether the endowment though it might constitute a wakf under the Mahommadan law will

come within the scope of the Wakf Act of 1954. Section 2 of that Act declares that the" provisions contained in the Act will apply to all wakfs.

But the term ""wakf"" has been defined in Section 3 (I) as meaning ""a permanent dedication by a person professing Islam of any moveable or

Immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes.....""(rest omitted)

18. A true concept of a wakf thus defined cannot be had unless we have regard to who the beneficiary or object can be. That term has been

defined in clause (a) to the above section as a ""person or object for whose benefit a wakf is created and includes religious pious and charitable

objects and any other charitable object of public utility established for the benefit of the Muslim Community.

19. A beneficiary is essentially a receiver of benefits. This definition makes a

clear distinction between a religious pious and charitable object on the one hand and a charitable object of public utility on the other implying that under the Act a public utility, charity is distinct from what is comprehended by the term religious pious and charitable.

20. Mr. Ismail who appears for the Wakf Board contends, that as this definition is but a reproduction of the definition of wakf under_ the common

law, it will take within it all charitable endowments created not exclusively for the benefit of the Muslims alone. An argument so broadly stated

cannot be accepted. A definition in a statute is but a key for the understanding of it. It has to be read with due regard to the scheme of the Act, to

accord with the intention of the Legislature. In *Arunachalam Chettiar v. Annamalai Chettiar*. 74 M. L. W. 593, a Bench of this court to which, one

of us was a party observed that if the scope of an enactment itself were limited, the apparently wide terms of a definition therein could not enlarge

it. In other words, the " definition like any other word in statute has to be read in the light of the context having regard to the scheme of the Act and

that if the scope of the enactment and the context in which the defined term is used has provided only for a limited operation such definition could

only have that limited meaning. In other words, wide as the term wakf is, its meaning should be correlated to the term beneficiary under the Act; for

there can be no wakf without a beneficiary or: an object. From the terms of the definition of the latter term, it is fairly evident that public utilities are

not under the Act intended to be comprehended by the words religious, pious and charitable as they are specifically and separately referred to

therein. Therefore public utility charities can come under the Act only if they partake of the character mentioned in the Act, i. e., if they are intended

for Muslims alone. For Section 3(a) says that a public utility in order to constitute a valid object within the Act should be intended exclusively for

the Muslim community. This has been pointed out by Gajendragadkar, J. in a recent decision of the Supreme Court in *Nawab Zain Yar Jung and*

Others Vs. The Director of Endowments and Another, , where that eminent Judge observes :

It is thus clear that the purpose for which a wakf can be created must be one which is recognised by Muslim law as pious, religious or charitable,

and the objects of public utility which may constitute beneficiaries under the wakf

must be objects for the benefit of the Muslim community." It has been further pointed out that the other provisions of the Act really emphasise the essential Muslim character of the foundation in order that it might constitute a wakf under the Act. That was a case where the Nizam of Hyderabad made endowments inter alia for the relief of the poor regardless of the community to which such persons belonged, for the maintenance upkeep and support of public religious institutions without their being restricted to any particular religion, for the advancement of education and for other charitable purposes without distinction of religion, caste or creed and for giving medical aid and relief, neither of them being confined to Muslims alone. The document was in the form of a conveyance to certain trustees in trust for the purposes aforesaid. The form of the document was however held not to be decisive of the character of an endowment. The Supreme Court has observed :

It is plain that it was farthest from the mind of the settlor to impose a limitation that the objects of general public utility should be confined to those recognised as such by Muslim law. It is thus clear that the outstanding features of the trust disclosed by these provisions is plainly inconsistent with the concept of a wakf and that itself would rule out the view that the document creates a wakf and not a comprehensive public charitable trust." In our view those observations are "particularly applicable to the present case and will be almost decisive of the question before us.

21. But Mr. Ismail for the respondent has sought to explain the decision on the ground that the terms of the foundation in that case envisaged an establishment and maintenance of places of worship for persons belonging to other religions and as such the document could not be a wakf.

Learned counsel further argued that as the document in that case empowered the trustees and indeed contemplated inroads into a part of the capital, it could not again be a wakf. We are not, however, convinced that the observations of the Supreme Court to which we have made reference could be distinguished in any such manner; indeed that an endowment for a public utility by a Muslim in order to come within the ambit of the Act should be one entirely for the Muslim community is manifest from the terms of the definition to which we have made reference, and to the express decision in the case.

22. As we have pointed out, the essential characteristics of a wakf under the Muslim law is that if it were to be religious it should be only for the benefit of the members of the Muslim community and if it were to be secular the charity should be to the poor alone. A public utility like: a school, college or hospital, bridge , etc., cannot obviously be restricted to the poor alone or to the Muslims alone. Under the common law, therefore, Muslim lawyers recognised that public utilities could be wakfs notwithstanding the fact that non-Muslims were intended to participate in the benefit". But the Wakf Act is perhaps enacted designedly with a view to exclude those that confer benefits on non-Muslims. If it were to be otherwise it would undoubtedly lead to inconvenient results and conflicts. Let us give an example. Suppose a college has been founded by a Muslim in a predominantly Hindu locality with the express object of providing education for seventy five per cent or more of Hindu students or students of an alien faith. It would certainly not have been the intention of the Legislature that such an institution should be managed by the Wakf Board by classifying it either as a Sunni or Shia Wakf and then applying the law of wakfs to such an institution.

23. It will be useful in this connection to. refer to a recent enactment by the Madras State Legislature, namely, the Madras Wakfs (Supplementary) Act, 1961, (Madras Act 19 of 1961) which has extended the operation of the Central Act to any wakfs created by a person professing any religion other than Islam, in the State of Madras. It is provided therein that the term wakf in Central Act 29 of 1954 shall include all property given or endowed to any person professing any religion other than Islam for the support of : (1) mosques, idaghas, imambaras, darghas, khanghas and or maqbars, (2) grave yards of persons professing Islam, and (3) choultries for or miuafarkhanas for the benefit of persons professing Islam.

The aforesaid provision relates to endowments made by persons professing any religion other than Islam and the Act cannot perhaps form a valid basis of interpretation as to the scope of the Central enactment. But at the same time, one cannot minimise its value as a legislative interpretation that in regard to secular charities like public utilities, the Central Act intended to bring within its ambit only those where the beneficiaries were

exclusively Muslims. It will be appropriate at this stage to refer to a case under an analogous statute. A question arose in the *The State of Madras*

and *Another Vs. The Urumu Seshachalam Chettiar Charities and Others*, which itself followed an earlier case, *Ramanasramam* by its secretary

G. Sambasiva Rao and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Madras, whether a charitable

endowment as defined in Section 6(4) of the Madras Hindu Religious and Charitable Endowment Act (Madras Act XIX of 1951) would include

within it a charity which intended to benefit not merely the Hindus, but persons of other communities as well. The term "Charitable endowment" as

defined in that enactment ran thus:

Religious endowment or endowment means all property given or endowed for the benefit of or used as of right by the Hindu or the Jain

community or any section thereof for the support or maintenance of objects of utility to the said community, or section such as rest houses, for

feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature and includes the

institution concerned.

It was held that the definition postulated the test of exclusiveness and unless therefore the benefits of an endowment were confined solely to the

Hindus, it would not be a charitable endowment within the scope of the statute albeit the term exclusively were not to be found in the definition.

The present is indeed a much stronger case, having regard to the terms of Section 3(a) which defines the word, "beneficiary". The decision cited

above was no doubt concerned with the interpretation of a different statute but we are of opinion that the reasons contained therein can be

adopted in the ascertainment of the scope of the enactment in question. In our opinion, therefore, a public utility foundation like a school or

college, established by a Muslim should in order to come within the terms of the Act be one exclusively intended for the benefit of the Muslims.

Under the Muhammadan law, it will undoubtedly be a meritorious act to found a school which offers secular education for the benefit of Muslims

and non-Muslims; That would be a wakf under the common law. But the statute, certainly for understandable if not for sound reasons, has

excluded such establishment from the operation of the Act, unless it is intended

by the terms of such foundation, exclusively for the benefit of the Muslims.

24. The decision of the lower appellate Court cannot, therefore, be sustained. It is set aside and the judgment of the trial Court is restored. There will be no order as to costs in any of the Courts.

(This case having been set down for being mentioned the Court made the following Order) :

Ramachandra, Iyer, C.J.

25. The matter has been posted to this date for being spoken to on the question whether the suit which is filed by the managing trustee could be maintained on behalf of the trust. This point was not argued by counsel for the respondent in support of the judgment of the lower Court at the time when the appeal was argued before us. We were, not at first prepared to allow the point to be raised after the, judgment was delivered. But, at the earnest request of the counsel for the respondent, the case was set down for hearing today to enable him to argue. He is not now ready to argue the point. We consider also that there is not much merit in the point either, firstly, because it would be open to the Managing Trustee to obtain a declaration of the kind sought in the case for the protection of the Trust, and secondly, it is a mere irregularity, which, if necessary, can be cured at any stage.