

HIGH COURT OF AZAD JAMMU AND KASHMIR

1. Writ petition No.2103/2022,
Date of Ins. 25.05.2022,
Date of Decision. 01.04.2024

Sahibzada Noor-ul Arfeen S/o Pir Allau-ud-Din Siddique,
Chancellor, Mohi-ud-Din Islamic University, Nerian
Sharif.

...Petitioner.

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir
Muzaffarabad, through its Secretary Higher
Education, Azad Govt. of the State of Jammu and
Kashmir, Muzaffarabad;
2. Secretary Higher Education, Azad Govt. of the State of
Jammu and Kashmir, having his office at New
Secretariat Chatter Muzaffarabad;
3. Minister for Higher Education Azad Govt. of the State
of Jammu and Kashmir (Patron of Mohi ud Din Islamic
University Nerian Sharif);
4. Accountant General Azad Jammu and Kashmir,
Muzaffarabad;
5. Mohi ud Din Islamic University through its Chancellor
Nerian Shareef, Tehsil Trarkhal, District Sudhnooti;
6. Sahibzada Pir Sultan-ul-Arfeen Chancellor Mohi-ud-
Din Islamic University Nerian Shareef, Tehsil Trarkhel,
District Sudhnoti;
7. Vice Chancellor Mohi-ud-Din Islamic University
Nerian Shareef, Tehsil Trarkhel, District Sudhnoti.

..... Respondents

2. Writ petition No.2117/2022,
Date of Ins. 25.05.2022,

1. Sahibzada Pir Sultan-ul-Afreen Chancellor Mohi-ud-
Din Islamic University, Nerian Sharif, Tehsil Trarkhel,
District Sudhnoti;
2. Mohi-u-Din Islamic University through its Registrar
Nerian Sharif, Tehsil Trarkheil, District Sudhnoti;

3. Vice Chancellor Mohi-ud-Din Islamic University Nerian Sharif, Tehsil Trarkhei, District Sudhnoti;

...Petitioners.

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Higher Education having his office at new Secretariat, Chatter Muzaffarabad;
2. The Chief Patron through Secretary Presidential Affairs, having his office at President Secretariat jalalbad, Muzaffarabad;
3. The Patron/Minister for Higher Education, Govt. of the State of Jammu and Kashmir having his office at new Secretariat Chatter Muzaffarabad;
4. Mir Faheem Akthar Rabbani, Minister for Law, Justice & Parliamentary Affairs in the Govt. of the State of Jammu and Kashmir, having his office at new Secretariat Chatter, Muzaffarabad;
5. Sahibzada Pir Noor-ul-Arfeen S/o Pir Ala-ud-Din Siddique R/o House No. 237/2, Mohalla Dhoke Kashmirian Satellite Town, Rawalpindi.

....Respondents.

6. Sahibzada Mohi-ul-Islam Siddiquia Trust (registered) through its Secretary General Mr. Asif Amin, Nerian Sharif, Tehsil Trarkhe, District Sudhnoti.

....Pro-forma Respondent.

3. Writ petition No.2349/2022,
Date of Ins. 09.06.2022,

Anjuman Mohi-ul-Islam Siddiquia Trust (Registered) through its Secretary General Mr. Asif Ami, Nerian Sharif, Tehsil Trarkhel, District Sudhnoti.

...Petitioner.

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Higher Education having its office at new Secretariat, Chatter, Muzaffarabad;

2. The Chief Patron through Secretary Presidential Affairs, having his office at President Secretariat Jalalabad, Muzaffarabad;
3. The Patron/Minister for Higher Education, Govt. of the State of Jammu and Kashmir, having his office at new Secretariat, Chatter, Muzaffarabad;
4. Sahibzada Pir Noor ul Arfeen S/o Pir Ala ud Din Siddique R/o House No. 237/2, Mohalla Dhoke, Kashmirian Satellite Town Rawalpindi;

...Respondents

5. Sahibzad Pir Sultan Ul Arfeen Chancellor Mohid ud Din Islamic University Nerian Sharif, Tehsil Trarkhel, District Sudhnoti;
6. Mohid ud Din Islamic University through its Registrar Nerian Sharif, Tehsil Trarkhei, District Sudhnoti.

...Pro-forma Respondents

WRIT PETITIONS

Before:- **Justice Sadaqat Hussain Raja, Chief Justice**
Justice Mian Arif Hussain, Judge
Justice Sardar M. Ejaz Khan, Judge,
Justice Ch. Khalid Rasheed, Judge,

PRESENT:

Barrister Humayun Nawaz Khan, Advocate for the petitioners Sahibazada Pir Sultan-ul-Arfeen and Anjuman Mohi-ul-Islam Siddiquia Trust in Writ Petition No. 2117/22022 and 2349/2022.

Mr. Shahzad Shafi Awan, Advocate for the petitioner in Writ Petition No. 2103/2022.

Raja Sajjad Ahmed Khan, Advocate for the respondents In Writ Petition No. 2117/2022 and Writ Petition No. 2349/2022.

Mr. Haider Rasheed Mughal, Assistant Advocate General for Official Respondents.

Syed Atif Mushtaq Gillani Advocate/Legal Advisor for Higher Education Department.

JUDGMENT:

(Justice Sadaqat Hussain Raja, C.J) The writ petition No. 2103/2022 has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby following prayer has been made by the petitioner.

It is, therefore, most humbly prayed that by accepting the instant petition an appropriate writ may kindly be issued:

- (i) By restraining the respondents from cancelling, modifying, amending and altering the notification issued in favour of petitioner under No. H.E.D/III(8)5/8059-68, dated 24.05.2022 as Chancellor of Mohi-ud-Din Islamic University, Nerian Sharif, AJ&K on political motivation and without any legal justification.
 - (ii) The impugned action of respondents is against the natural justice against the prevailing law based on mala-fide intention against the legitimate right of the petitioner liable to be struck down.
 - (iii) Any other relief which this Hon'ble court deems fit may also be granted.
2. In Writ Petition 2117/2022, the following prayer has been sought by the petitioner.

“It is, therefore, respectfully that this writ petition may graciously be accepted and impugned notification dated 24.05.2022 may kindly be set aside by declaring the same as illegal, void ab initio and having no legal effect upon rights of petitioners. Any other relief to which the petitioner are entitled under the law, justice and equity may also be awarded with cost to the petitioner.”

3. In Writ Petition No.2349/2022, following prayer has been made by the petitioner.

“Therefore, it is most respectfully prayed that this writ petition may graciously be accepted and impugned notification dated 24.05.2022 may kindly be declaring the same as illegal, void ab initio and having no legal effect upon rights of petitioner. Any other relief to which the petitioner is entitled under the law, justice and equity may also be granted with costs to the petitioner.”

4. As common questions of facts and law are involved in the above titled writ petitions, therefore, the same were collectively addressed together and are resolved through this single judgment.

5. Facts forming the background of writ petition No. 2103/22, are that petitioner is 1st Class State Subject of Azad Jammu and Kashmir and currently holds the position of Chancellor at Mohi-ud-Din Islamic University, Nerian Sharif. It is stated that the University was established through Act I of 2000 and Pir Alla-ud-Din Siddiqui was appointed as the first lifetime Chancellor of the University. It is further stated that after the demise of Pir Alla-ud-Din Siddiqui, (the first life time Chancellor), the executive Committee appointed Sahibzada Pir Sultan-ul-Arfeen as Chancellor for term of five years. Eventually, Sahibzada Pir Sultan-ul-Arfeen term as Chancellor was to be concluded on

20.03.2022 and the meeting of Trust Anjuman Mohi ul Islam Siddiqia was convened on 08.02.2022 and recommended the name of Sahibzada Pir Noor-ul-Arfeen for appointment as Chancellor of Mohi-ud-Din Islamic University for next 05 years and the General Secretary (Pir Shams-ul-Arfeen) in light of the decision of the Trust wrote a letter to the Minister Higher Education (Patron) for seeking approval of appointment as Chancellor. It is further submitted that after the approval from the Minister Higher Education (the Patron) the Government issued notification for appointment of petitioner as Chancellor of the University for 05 years term.

6. The respondents opposed the writ petition by filing written statement, wherein, it is stated that the writ petition is not maintainable because of non-joinder of necessary parties specifically Mohi-ud-Din Islamic University. It is further stated that the petitioner sought intervention of this Court to protect the notification dated 24.05.2022 which has been issued in violation of Section 09 of Mohi-ud-Din Islamic University Nerian Sharif Act, 1999. The private respondent contested the legitimacy of the petitioner role as Chancellor, citing the absence of a registered Trust under the name of Anjuman Mohi-ul-Islam Siddiqia Trust. It is further submitted that the private respondent (Pir Sultan-ul-

Arfeen), after the demise of first life time Chancellor of University Pir Alla-ud-Din Siddiqui was appointed as Chancellor of the University and no duration was fixed in the notification dated 21.03.2017 and the Executive Committee of the Trust after detailed deliberation acknowledged him as second life time Chancellor.

7. In Writ Petition No. 2117/2022, the petitioner (Sahibzada Pir Sultan-ul-Arfeen) asserts that his credentials are PH.D Degree Holder with a distinguish reputation in field of knowledge and was appointed second lifetime Chancellor of Mohi-ud-Din Islamic University, Nerian Sharif based on his intellectual and moral standing. It is submitted that the appointment of petitioner No.1 was made as per section 9 of the Mohi ud Din Islamic University Nerian Sharif Act, 1999.

8. Written statement has been filed on behalf of respondents, wherein, it is alleging that the petitioners have concealed the facts and the writ petition is subject to be dismissal. It is stated that petitioner No.1 was recommended for appointment of 05 years as Chancellor and tenure of petitioner No.1 has been expired, so, the claim of petitioner that he was life time Chancellor of the University is incorrect. It is further submitted that the appointment of respondent No.5 has been

made on the recommendations of the Trust which has not been arrayed as party in the line of real respondents. It is further submitted that Trust of the petitioners have not been registered as per legal requirement, hence, the writ petition is liable to be dismissed.

9. In Writ Petition No. 2349/2022, the petitioner has disputed the notification dated 24.05.2022 and stated that the Chancellor of Mohi ud Din Islamic University Nerian Sharif has not been appointed as per section 09 of the Mohi-ud-Din Islamic University, Nerian Sharif Act, 1999. It is contended that the petitioner recommended the appointment of private respondent No.5, as Chancellor of the University vide notification dated 21.03.2017 after the death of Hazrat Pir Allau Din Siddiqui. It is contended that a dispute arose regarding the duration of Chancellor's appointment after issuance of notification dated 21.03.2017 and the petitioner acknowledged that the private respondent No.5 is the second life time chancellor of the University. It is submitted that that the petitioner received a facsimile copy of notification dated 24.05.2022, whereby, private respondent No.4 has been appointed as Chancellor of the Mohi ud Din Islamic University, Nerian Shairf, Tehsil Trarkhal.

10. Written statement has been filed on behalf of respondents, wherein, it is stated that the writ petition has been filed on the basis of certificate of registration issued by Kashmir Council on 16.09.2019. The Azad Jammu and Kashmir Council had no legal authority to register any Trust After 13th amendment in the Interim Constitution 1974. It is further stated that the petitioner failed to point any violation of fundamental right or law or any rule, hence, the writ petition is not maintainable. It is contended that the writ petition has been filed for protection of ill-gotten gain, hence, the same is not maintainable. It is further contended that pro-forma respondent No.5 has been appointed as Chancellor of University for a term of 05 years and tenure of 5 years has been completed. It is alleged that that the petitioner has no legal authority to recommend the pro-forma respondent to be appointed as Chancellor for the period of 05.

11. Barrister Humayun Nawaz Khan, the learned counsel for the petitioner in Writ Petition Nos.2117/2022 and 4349/2022, argued that Anjuman Mohi-ul-Islam Siddiquia Trust was registered under the Azad Jammu and Kashmir Council Extension of Voluntary Social Welfare Agencies (Registration & Control) Act, 1982 and section 9 of the Mohi-ud-Din Islamic University Nerian Sharif Act, 1999, deals with appointment of Chancellor of the

University. He asserted that Trust recommendations play a crucial role in appointment of University's Chancellor and Section 02 of said Act provides the definition of trust. He argued that Pir Allu ud Din Siddiqui was the first lifetime Chancellor of the University and after his demise a dispute arose over the appointment of Chancellor of the University. The learned counsel emphasized that Anjuman Mohi ul Islam Siddiqia "Trust" is a validly registered entity which appropriately recommended the name of Pir Sultan Ul Arfeen as Chancellor of the University. The learned counsel further maintained that the Trust Act 1882 has been repealed by the Trust Act, 2021, and Section 112 of the Said Act dissolved all the previous Trusts and the petitioner applied for registration of trust before the competent authority which is pending and on the other hand, the respondent has not applied for registration of the trust and it was mandatory for previously registered trust to apply for fresh registration of trust. He further argued that the appointment notification was issued on the recommendations of trust which has been dissolved through Trust Act 2021, rendering it legally ineffective.

12. Raja Sajjad Ahmed Khan, the learned counsel for private respondent (Sahibzad Noor ul Arfeen) argued that Sahibzada Pir Sultan ul Arfeen was recommended as Chancellor

for a term of 05 years and tenure of petitioner has been elapsed, so the petitioner's assertion of being lifetime Chancellor is incorrect. He argued that appointment of Sahibzada Pir Noor ul Arfeen has been made on the recommendations of Trust which has not been arrayed as party, therefore, the writ petition is liable to be dismissed on this score alone. The learned counsel further argued that after 13th amendment, the Azad Jammu and Kashmir Council has no legal or executive authority. Hence, the registration certificate dated 16th September, 2019 lacks legal validity. He argued that the Trust has recommended Sahibzada Pir Noor-ul-Arfeen for a term of five years. Reliance was made to the legal precedents in the following cases law.

PLD 1989 SC 283,

2019 CLC 877

2019 CLC 75.

13. Mr. Shahzad Shafi Awan, Advocate has owned the arguments advanced at bar by Raja Sajjad Ahmed Khan, Advocate.

14. Syed Atif Mushtaq Gillani, legal Advisor for higher education argued that both the trusts are not registered according to law, hence prayed for dismissal of writ petitions.

15. Mr. Haider Rasheed Mughal, AAG produced the record regarding donation of funds by the Government and also produced the record of registration of Association by Joint Stock Companies.

16. The arguments advanced by counsel representing the parties were heard and all the available record was thoroughly examined.

17. Based on the submissions and pleadings presented by the parties, the following issue requires clarification;

(a) Whether any Trust claimed by both the parties has been duly established according to law to recommend a person for the position of Chancellor?

18. In order to address this issue, we have to consider the relevant provision of Trust Act 1882. Section 03 of the Trust Act 1882 deals with the definition of Trust. The relevant Section 03 of the Trusts Act, 1882 is reproduced as under:

3. Interpretation Clause :- “trust” a trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another of the owner.

19. This Section delineates key terminology in the trust, the Trusts Act, 1882 i.e.

- i. **Author of the Trust**
- ii. **Trustee**
- iii. **Beneficiary**
- iv. **Trust Property**
- v. **Beneficial interest and**
- vi. **Instrument of trust**

20. Section 06 of the Trusts Act, 1882 provides creation of trust. The relevant section is reproduced as under:

Sec. 06. Creation of trust: Subject to the provisions of Sections 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust (b) the purpose of the trust (c) the beneficiary and (d) the trust property and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

21. The process for creation of trust is also provided under Section 06 of the Azad Jammu and Kashmir Trusts Act 2021. For the proper appreciation, the said section 06 is reproduced as under:

6. Creation of trusts: Subject to the provisions of Sections 4 and 5, a trust is created when the author of the trust indicates with reasonable certainty in writing:

- (a) an intention to create a trust;
- (b) purpose of trust;
- (c) trustee;
- (d) beneficiary;
- (e) trust property; and
- (f) transfers the trust property to the trust, unless the trust is declared by will or the author is himself to be the trustee.

22. Section 05 of the Azad Jammu and Kashmir Trusts Act, 2021 also provides the validity of Trusts. The relevant Section is reproduced as under:

- 5. Validity of Trusts:** (1) No trust in relation to an immovable property shall be valid unless declared by a non-testamentary instrument in writing signed by the author of the trust and the trustee, and duly registered, or by the will of the author of the trust or of the trustee and ownership of the property is transferred to the trust.
- (2) No trust in relation to moveable property shall be valid unless declared in the manner as given under sub-section (1), or unless the ownership of the property is transferred to the trust.

23. To resolve the controversy, we have to examine that any of the trust claimed by both the parties is validly registered trust or not?

24 In Writ Petition No. 2117/2022, filed by Sahibzada Sultan-ul-Arfeen, it is claimed that the Trust was created in the year 1997 and was registered with Azad Jammu and Kashmir Council and Section 2 (xviii) of the Mohi-ud-Din Islamic University Act has declared it as a trust. It is worth noting that in the 1997, the trust was dealt with Trust Act 1882 and Section 06 of the said Act provides procedure for creation of Trust which demands certainties in the following matters.

- a. Certainty of intention**
- b. Certainty of subject matter**
- c. Certainty in object**
- d. Certainty of trustees**
- e. Certainty of beneficiaries**

25. We have thoroughly examined the process of creation of trust as claimed by both the parties. It is settled law that above mentioned requirements were mandatory for creation of trust under The Trusts Act, 1882. It is very astonishing that in the 1997, an Association named as “Anjuman Mohi-ul-Islam Siddiquia Trust” was registered by the Azad Jammu and Kashmir Council and similar organization was registered by Industrial and Trade Department of Azad Jammu and Kashmir on the application of same person i.e. Pir Alau-ud-Din Siddiqui (Late). No doubt, no specific words are mentioned to ascertain the intention of the author of the trust but it can be determined by his actions. Record was summoned from the Industrial Department regarding registration of Association whereas copies of record for registration by the Azad Jammu and Kashmir Council were provided by Barrister Humayun Nawaz Khan, the learned counsel for the petitioner in Writ Petition Nos. 2117/2022 & 2349/2022. The copies of the above mentioned record have been made part of the files,

the minutes of the meeting convened for registration of Association are available on the record. The relevant portion of minutes of meeting is reproduced as under:

روئید ادا اجلاس منعقدہ 22 مئی 1998

انجمن محی اسلام صدیقہ کا پہلا باقاعدہ اجلاس آج بروز جمعہ مورخہ ۲۲ مئی ۱۹۹۸ بعد نماز جمعہ ریصدارات جناب الحاج پیر علاؤ الدین صدیقی صاحب، نیریاں شریف آستانہ عالیہ کے حال میں منعقد ہوا۔ اجلاس کی ابتدا تلاوت کلام پاک سے ہوئی۔ تلاوت جناب پیر شمس العافین صاحب نے فرمائی۔ انجمن کی سالانہ کارروائی جنرل سیکرٹری انجمن نے پیش کی جسے متفقہ طور پر منظور کر لیا گیا۔ ایجنڈا کے مطابق سب سے پہلے مجوزہ یونیورسٹی جسے محی الدین اسلامی یونیورسٹی نیریاں شریف کا نام دیا گیا تھا کے بارہ میں ذرائع آمدن اور تخمینہ اخراجات بحث ہوئی۔ خازنہ انجمن نے مالیاتی پوزیشن اور مستقبل کے لیے درکار رقم کی وضاحت کی۔ فیصلہ ہوا کہ تمام ممبران انجمن کی آمدی میں اضافہ کا فرداً اور اجتماعی طور پر بھی اہتمام کریں تاکہ اس دور دراز علاقہ میں تدریسی سہولتوں اور علمی کارناموں کی بحسن و خوبی ابتداء ہو سکے۔ تعمیر کے مختلف پہلوؤں کا بھی جائزہ لیا گیا اور آئندہ کے منصوبوں پر بھی بحث ہوئی۔ صدر صاحب نے ارشاد فرمایا کہ یونیورسٹی کے اہتمام اور انصرام کی ذمہ داری چونکہ انجمن پر ہے اور یہ ایک بڑی اور مسلسل ذمہ داری ہے اس لیے بہتر ہوگا کہ انجمن کی باقاعدہ رجسٹریشن کروائی جائے تاکہ تمام معاملات قواعد و ضوابط کے مطابق چلائے جائیں اور ان کے چلائے جانے میں سہولت بھی ہو۔ تمام ممبران نے اس سلسلے میں اپنی اپنی رائے کا اظہار کیا اور رجسٹریشن کی تجویز کی متفقہ طور پر تائید کی۔ جنرل سیکرٹری کو مطلوبہ کاغذات کی تکمیل کا کہا گیا اور فیصلہ ہوا کہ قواعد کے مطابق تمام کارروائی مکمل کر کے پہلی فرصت میں رجسٹریشن کے لیے فائل محکمہ کو پیش کر دی جائے تاکہ جانٹھ اسٹاک کمپنیز ایکٹ 1860 کے تحت انجمن رجسٹرڈ ہو جائے۔ جنرل سیکرٹری نے انجمن کے دستور و آئین کا مسودہ اجلاس میں پیش کیا۔ شرکاء نے انجمن کے دستور و آئین کے ملاحظہ اور اس پر بحث و تمہیص کے بعد متفقہ طور پر اسے منظور کر لیا۔ صدر جلسہ نے تاکید کی کہ ایک ہفتہ کے اندر تمام ممبران کے ضروری کوائف، شناختی کارڈ، اور ان کے دستخط حاصل کر کے مکمل فائل جلد از جلد روانہ کر دی جائے۔ تمام ممبران نے اس کی تائید کی اور خوشی کا اظہار کیا۔ باہمی مشوروں کی اہمیت اور افادیت اور انجمن کے اجلاس کے جلد انعقاد کا بھی فیصلہ ہوا۔

Underling is ours

26. From perusal of minutes of the meeting, it reveals that there is no intention to create a trust rather to register an association to manage the business of the educational institutions.

27. The Government of Azad Jammu and Kashmir vide notification dated 28.05.2023, granted a land measuring 200 kanals bearing survey No. 922 situated at Industrial Area Mirpur

as a donation with a condition that college administration will reserve 20 seats at discretion of the Government (Donor). During course of arguments, a query was made to the learned counsel for the petitioner that whether a College Administration has reserved any seat for poor and needy students, he frankly conceded that no such like seats have been reserved in this regard. The record also postulates that the petitioner Anjuman Mohi Islam Saddiqui Trust took over the possession of the land and constructed the building of the college but practically the said contract regarding reservation of the 20 seats have not been complied with and the said factum has been admitted by both the learned counsel for parties at bar. The notification is reproduced as under:-

آزاد حکومت ریاست جموں و کشمیر۔
(بورڈ آف ریونیو)

مظفر آباد

مورخہ 25 مئی 2003

نوٹیفکیشن:

نمبر 66-2357، 2003 جناب صدر آزاد جموں و کشمیر نے کابینہ کے فیصلہ صدرہ 06.08.2002 کی روشنی میں میڈیکل کی تعلیم کے فراغ، اس سلسلہ میں نجی شعبہ کی حوصلہ افزائی اور عوام الناس کی خاطر محی الدین میڈیکل کالج میر پور کے لیے جذبہ خیر سگالی کے طور پر 200 کنال اراضی زیر نمبر خسرہ 922 واقع نیوانڈسٹرل ایریا میر پور بطور عطیہ منتقل کرنے اور حکومت کے اخراجات کو Write off کرنے کی منظوری صادر فرمائی ہے۔
جناب صدر نے اس امر کی بھی منظوری صادر فرمائی ہے کہ محی الدین میڈیکل کالج کی انتظامیہ کے ساتھ میڈیکل کی سالانہ 20 نشستیں حکومت کی صوابدید پر رکھے جانے کے سلسلہ میں باقاعدہ معاہدہ تحریر و تکمیل کیا جائے۔

اسسٹنٹ سیکرٹری (جنرل)

بورڈ آف ریونیو۔

(Underling is for emphasis)

28. Next ingredient to create a trust is certainty in the subject matter. As it has been mentioned in the preceding paragraphs that minutes of meeting are available which clarifies that no subject matter whatsoever was available for creation of trust. It is very clear from the record that at the time of creation of Anjuman Mohi Ul Islam Siddiqui, its author Pir Allua Din Siddiqui (late) did not donate any moveable or immovable property which has been made subject matter of the trust and after its creation, the land was donated by Azad Jammu and Kashmir Government. It is very astonishing that at present this Association claiming to be a trust is the owner of billions of assets but only **10 thousands (Ten Thousand)** rupees have been shown to be donated by the author of the trust in clause 6.5 of the trust deed executed in 26.12.2017. Relevant clause is reproduced as under:

Anjuman Mohi-ul-Islam Siddiquia (Trust)

Clause 6.5) The Settlers own, hold and is in possession of a sum of over **Rs. 1000,000/- (Rupees Ten Thousand only)**. On execution of this Deed of Trust and registration thereof, the BOARD shall take charge of the said amount and it shall form the corpus of the property of the ANJUMAN MOHI-UL-ISLAM SIDDIQIA TRUST, and shall not be disposed of or subjected to any kind of charge for the purpose of meeting the expenses or for carrying out the subjects of the ANJUMAN MOHI-UL-ILSAM SIDDIQIA TRUST or for any other purpose unless otherwise resolved by a mutual agreement between the members of the board.

29. The minutes of meeting are very important to determine the requirements for creation of trust. In minutes, the requirement of Sections 03 and 06 as mentioned in the above Act have not been fulfilled.

30. From the perusal of record it cannot be determined that who is author of the trust? If it is considered that an Association named as “Anjuman Mohi-ul-Islam Siddiquia Trust” is author of the trust by stretching the domain from the above mentioned minutes of the meeting, the next question arises that who is the trustee? If this Association is considered as “**trustee**”, then another question emerges that who is **beneficiary** of the trust? These questions were confronted to the learned counsel for the parties but the learned counsel of both the parties failed to reply these questions and the record is silent in this regard, so, it can safely be said that the “Association Anjuman Mohi-ul-Islam Siddiquia” is itself the **author** of the Trust, **beneficiary** of the trust and **trustee** of the trust at the same time which is not warranted by law.

31. For the purpose of valid trust, the above mentioned conditions were essential and must co-exist simultaneously and in the absence of any one condition, no valid trust would come

into existence. A settlor has to demonstrate that he intended to create a trust demarcated the property to be the subject matter of the trust and that he has identified the beneficiaries of the trusts.

32. The trust are categories into two types (i) private trust (ii) public trust. In this specific case, trust claimed to be public trust as this trust was shown to be created for benefits of public at large. It has been brought on record that Azad Jammu and Kashmir Government is a “**significant donor**” for creation of assets of this Association. As the Azad Government has donated 200 kanals land from Industrial Area of Mirpur through Cabinet decision. It is pertinent to mention here that according to law, in industrial area, a plot or industrial unit can be allotted to a lessee on lease rather to transfer through Government notification in favour of an Association. Since the issue regarding the legality of transfer of property in industrial area is not our subject, so we restrained to ourself comment on this point. It is pertinent to mention here that an application was moved for registration of Anjuman Mohi-ul-Islam Siddiquia Trust and “Anjuman” means “Association” and there was no intention of any person to create a **trust** rather to register an Association for educational purposes. The argument of learned counsel for the petitioner in writ

petition No. 2117/2022 that Section 2(1) of the Mohid-ud-Din Islamic University Act provides that trust Anjuman Mohi-ul-Islam Siddiquia Trust is a valid trust is not tangible because a trust neither can be created nor dissolved by University Act, rather the same can only be created or dissolved by under Trust Act enforceable at the time of its creation.

33. As per record, provided by the counsel for the petitioner in writ petition Nos. 2117/2022, and 2349/2022, it has been found that the said association was officially registered under Registration No. 157 on 4th June, 1997. It is also noted in the record that this Trust has been dysfunctional since 1997, a fact acknowledged by the registration authority of social welfare agencies AJK in their order dated 14th March, 2017 which is reproduced as under:

No. C-II5/1/2015-AJKC
Azad Jammu and Kashmir Council
Secretariat

Sector F-5/2,
Islamabad, the 14 the March 2017.

ORDER

Subject: Dissolution of Voluntary Social Selfare agencies of AJ&K Registered with AJ&K Council Secretariat.

Whereas, the following voluntary Social Welfare Agencies, hereinafter refer to the said Agencies, are registered with Registration Authority, Voluntary Social Welfare Agencies, AJ&K under the provisions of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 hereinafter

shall be construed to refer to the said Ordinance, as adapted /extended by virtue of The Azad Jammu and Kashmir Council Extension of Voluntary Social Welfare Agencies (Registration and Control) Act, 1982, as amended from time to time, and the Rules made thereunder:

S. #	Name of Agency	Reg. No. and date	Remarks
01	Dukhi, Welfare Association, Mzd	30 of 1986 14.07.1986	Dysfunctional since its registration
02	Young Social Welfare Association, Mirpur	33 of 1987 04.05.1987	Dysfunctional since 1990
03	Social Welfare Society Muzaffarabad	36 of 1988 07.02.1988	Dysfunctional since 1990
04.	Anjuman Insdad-e-Manshyat Mzd	47 of 1989 10.04.1989	Dysfunctional since 1990
05	Adeem ul Masal Anjuman Bahbood-e-Khawateen-wa-Itifal, Mirpur	48 of 1989 22.04.1989	Dysfunctional since 2006
06	Samaji Behbood, Muzaffarabad	49 of 1989 02.11.1989	Dysfunctional since 1998
07	Idra-e-Samaji Bdhbood, Sudhnoti	94 of 1994 28.04.1998	Dysfunctional since 2006
08	Al-Falah Tanzeem Panthal, Sudhnoti	102 of 1994 17.11.1994	Dysfunctional since its registration
09	Anjuman Mahi-ul-Islam Siiddiquia, Sudhnooti,	157 of 1997 04.06.1997	Dysfunctional since 1997
10	Insaf Welfare Organization, Sudhnoti	182 of 2004 05.05.2000	Dysfunctional since its registration
11	Flying Afsar Muhammad Afzal Khan Shaheed Trust, Sudhnoti	191 of 2000 26.09.2000	Dysfunctional since its registration
12	Hamdard Welfare Foundation, Sudhnooti,	230 of 2004 31.08.2004	Dysfunctional since its registration
13	Socio Economic Development Foundation, Sudhnooti,	254 of 2006 05.01.2006	Dysfunctional since its registration
14	Public Care Trust, Poonch	287 of 2007 20.07.2007	Dysfunctional since 2009
15	Ujallah Welfare Association, Sudhnooti	333 of 2010 30.06.2010	Dysfunctional since its registration

2. And whereas the District Administration has reported that **neither the aforesaid Agencies exists in AJ&K nor any welfare activity on their part is being observed. Subsequently, they have recommended for cancellation of registration as the said Agencies** were found non-functional.
3. An whereas, the record rest with the Secretariat has also been perused and found that the said Agencies are dysfunctional since their registration. Subsequently, Show Cause Notice (s) were issued directed the management of the said Agencies to furnish their written defense as to why their registration should not be cancelled as per law. In response thereof, no body appeared for and on behalf of the said Agencies within stipulated period. Even no written response has also been received.
4. And whereas, the undersigned, in his capacity as Registration Authority, Voluntary Social Welfare Agencies, AJ&K, after thorough consideration of the material facts, involved in the matter, has reason to believe that the said Agencies are dysfunctional since long as confirmed by the concerned officers.
5. Now, therefore, in exercise of the **powers vested under Section 10(2) of the said Ordinance, Voluntary Social Welfare Agencies, mentioned under Paragraph-1** above, are hereby dissolved with immediate effect.

**(Hamid Nisar Recitation Authority)
Voluntary Social Welfare Agencies, AJ&K.**

Underling is ours

34. According to para 5 of this order indicates dissolution of Trust on the grounds mentioned in the order instead of challenging this order a new registration process was initiated by the petitioner in writ petitions Nos. 2117/2022 and 2349/2022

and obtained registration certificate No. 378/2019 dated 16th Sep.

2019. The relevant letter is reproduced as under:

No. C-II-9/2/2017-AJKC
Azad Jammu and Kashmir Council
Secretariat

Sector F-5/2,
Islamabad, the 20 September 2019.

To,

The Secretary General,
(Muhammad Asif Amin),
Anjuman Mahi ul Islamd Siddiquia Trust
Basement of Wiqtoria Hights, Mohammadi Town Sohan
Interchange, Islamabad Express,
Islamabad.

SUBJECT: REGISTRATION IN FAVOUR OF VOLUNTARY SOCIAL WELFARE AGENCY TITLED ANJUMAN MAHI-UL-ISLAM SIDDIQUIA (TRUST) DISTRICT SUDHNOTI AJ&K.

I am directed to forward herewith a Certificate of Registration No. 378 of 2019, dated 16th September, 2019 in favour of Anjuman Mahi-ul-Islam Siddiquia (Trust) District Sudhnoti (AJ&K).

2. You are, therefore, directed to acknowledge the receipt of Certificate of Registration bearing No. 378 of 2019, dated 16th September 2019 in the matter.

Yours faithfully

(Syed Muhammad Hussain)
Section Officer (C-II)

35. Conversely, the registration submitted by the petitioner in writ petition No. 2103/22 is issued by the Registrar Joint Stock Companies of Azad Government of the State of Jammu and Kashmir bearing No. 4384 dated 12.06.1998 as an Association not

as a Trust. It is worth mentioning that no trust was registered with Joint Stock Companies of AJK rather an Association was registered.

36. In the aforementioned order of dissolution, it has been explicitly stated that the trust has been “dysfunctional” since 1997” and after issuance of notices the trust was ultimately dissolved. The order highlighted by the dysfunctional status of the trust since 1997 and also indicates in paragraph No. 02 that the agencies mentioned in the order do not exist in AJK with no observable welfare activities conducted by them in the territory of AJK.

37. Section 9 of the University Act deals with the appointment of Chancellor which is reproduced as under:

9. The Chancellor (1) The Chancellor shall be a person of eminence known for his contribution in the field of knowledge or service to the society and appreciated for his high moral and intellectual caliber.

Provided that the Pir Alla-ud-din Siddique shall be the first life time Chancellor of the university and in cases of his death, illness, inability or any other cause the Chancellor, appointed by the Trust and approved by the Patron on such terms and conditions as may be determined by the Trust shall perform the function of the office.

(2) The Chancellor if present shall preside at the convocation of the University;

- (3) Every proposal to confirm honorary degree shall be subject to confirmation by the Chancellor.
- (4) The degree diplomas and certificate issue by the University will be signed by the controller of examination and be counter signed by the Chancellor
- (5) The Chancellor if satisfied that the proceedings of any authority or orders of any office are not in accordance with the provisions of this act, the Statutes the regulations or the rules, he may after calling upon such authority or officer to show cause why such proceedings should not be annulled, by order in writing annual such proceedings or orders.
- (6) The Chancellor shall exercise and perform such other powers and functions as may be prescribed.”

38. According to this section, the trust can recommend a person for appointment as Chancellor of the University as we discussed in preceding paragraph that no valid trust was found to be created according to law.

39. The learned counsel for the petitioner in Writ Petition No. 2117/2022, argued that according to Section 112 of the said Act, 2021 all trusts including legal one have been dissolved and it is necessity to register a trust within 6 months and only the petitioner has initiated for the process of registration of trust which is pending before the relevant authority. We have reviewed the trust deed submitted by the petitioner which does

not meet the necessary requirements of trust as mentioned in the preceding paragraphs.

40. Raja Sajjad Ahmed Khan, the learned counsel for private respondent in Writ Petition Nos. 2117/2022 and 2349/2022 also objected that the writ petition is not maintainable on the ground that respondent No. 5 has been appointed as Chancellor on the recommendations of Trust and Trust was not arrayed as party in the line of respondents, hence, being non impleading of necessary party, the writ petition is not maintainable which is liable to be dismissed. As it has been observed that no valid trust is registered or documented, hence, question for arraying necessary party in the line of respondents is meaningless, so, the objection raised by the learned counsel for the respondent is repelled.

41. As it has been mentioned in the above paragraphs that the trust has been dissolved by the registration authority on the ground mentioned in the dissolution order. The observations made by the registration authority were not assailed by the petitioner which clearly indicates that agency registered with AJK Council remained inoperative since 1997.

42. In light of what has been discussed above, the question regarding the validity of any trust claimed by both the parties as duly registered trust is definitely answered in the negative for the following reasons.

- i. **Due to the absence of essential requirement which are fundamental prerequisite for the trust.**
- ii. **Registration of the Agency with the same name by the similar individual by different registration authorities makes the whole proceedings doubtful.**
- iii. **Lack of tangible trust activities within the territory of AJK;**
- iv. **Absence of welfare activities being carried by any one of them.**

43. Is there any valid trust under the law? This matter was confronted to the learned counsel for both the parties. Barrister Humayun Nawaz Khan, Advocate representing the petitioner Sahibzada Pir Sultan-ul-Arfeen in writ petition No. 2117/2022 reluctantly acknowledged that no valid trust is recognized under the Trust Act but registered under the University Act. He argued that his client had sought registration with the council in the year 2019, whereas, on the other hand, Raja Sajjad Ahmed Khan, Advocate the learned counsel for private respondent Sahibzada Pir Noor ul Arfeen, also acknowledged that there is no validly registered trust, hence, the recommendations of the appointment as chancellor of both the petitioners i.e. Pir Sultan-ul-Arfeen and Pir Noor-ul-Arfeen and their appointment

notifications based on these recommendations are against the law which cannot be protected.

44. As discussed above that there is nothing further to add regarding the entire process of creation of **so called trusts**, apart from what the renowned National Poet Allama Muhammad Iqbal has expressed his view in poem **“Baghi Murid”** (باغی مرید).

45. As it has been discussed hereinabove, that there is no valid registered trust, hence, the recommendations for appointment as Chancellor in writ petition No. 2103/22 filed by Sahibzada Noor-ul-Arfeen for protection of his appointment notification dated 24.05.2022 is against the law which cannot be protected at any cost. The legitimacy of appointment of both the parties is questioned, with the conclusion, being that the appointment of both the petitioners lack legal validity due to the absence of the validly registered trust. Consequently, without a properly registered trust the appointment of both the petitioners as chancellor of the university lacks legal backing and does not hold any legitimacy.

46. Another aspect of the case that what will be way forward in this situation? This question was confronted with the counsel for both the parties, who unanimously expressed that if the Court is of opinion that there is no valid trust, the

appointment of the Chancellor of the University should be done by the Patron provided in the Models Statutes for the Universities as adopted in Azad Jammu and Kashmir.

47. In view of afore narrated eventuality, we are of the considered view that the Azad Govt., being **main donor** to the Association in according to law, Minister Higher Education as Patron of the University is authorized to make appointment of Chancellor according to the Models Statutes as mentioned above. It is relevant to mention here that worthy President of AJK is Patron in Chief of the University according to the University Act and he is the **Chancellor** of all the Universities of Azad Jammu and Kashmir. As there is no valid trust registered or created, hence, the Government of Azad Jammu and Kashmir is directed to make appointment of the Chancellor of the University to manage the business of educational institutions created under University Act 1999. It is worthwhile to mention here that the property related to this Association (Anjum Mohi-UI-Islam Saddiquia) is not inherited property of both the petitioners or their legal heirs, hence, the same cannot be claimed or transferred as legacy from one person to another person or any legal heir.

In light of what has been stated above, the writ petitions are disposed of in the manner that notifications

pertaining to the appointments of Sahibzada Sultan-ul-Arfeen dated 21.03.2017 as lifetime Chancellor, and Sahibzada-Noor-ul-Arfeen dated 24.05.2022 respectively, are against the law which are hereby rescinded and the official respondents/ Govt. is directed to appoint Chancellor of Mohi-ud-Din Islamic University Nerian Sharif within a reasonable time. The office is directed to transmit the copy of this Judgment to the concerned quarters immediately for necessary action and copy of this Judgment shall be annexed with the connected files.

Muzaffarabad
01.04.2024(A)

CHIEF JUSTICE

**JUDGE
(MAH)**

**JUDGE
(SME)**

**JUDGE
(CKR)**

Approved for Reporting

CHIEF JUSTICE