

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1556 OF 2015

Syed Mujiroddin Quazi s/o
Muniroddin Quazi

- PETITIONER

VERSUS

1) The State of Maharashtra
and others.

- RESPONDENTS

Mr.SS Kazi, Advocate for Petitioner;
Mrs.MA Deshpande, AGP for State;
Mr.S.A.P.Quadri, Advocate for Respondent No.3;
Mr.Mohd.Wasemullah, Adv. For Resp.Nos. 4 & 6.

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**CORAM : R.M.BORDE &
 P.R.BORA, JJ.**

DATE : 10th August, 2015.

COURT'S ORDER (PER:- P.R.BORA, J.)

1) Heard. With the consent of learned Counsel for the parties, the petition is taken up for final hearing at admission stage.

2) By this petition, the petitioner questions appointments of Respondent Nos.3 to 7 as Qari-un-Nikah made by Respondent No.2 – Maharashtra State Board of Waqf. It is the contention of the petitioner that the Waqf Board

does not possess any such power to appoint Kazis.

3) Mr.S.S.Kazi, Learned Counsel appearing for the petitioner, relying on the judgment of the Division Bench; and more particularly Para 8 thereof in the case of Qazi Fashiuddin s/o Isamuddin Vs. State of Maharashtra (Writ Petition No.7781/2005), submitted that there is no provision in the Waqf Act, 1995, conferring any right or power on the Waqf Board to appoint either Qazi or Quri-un-Nikah. Learned Counsel pointed out that the Division Bench of this Court in the cited matter, had set aside the appointment of Respondent No.3 in the said petition on the post of Qazi made by Waqf Board.

4) Mr.Kazi further submitted that the observations made and the conclusions drawn by the Division Bench of this Court in the aforesaid matter, will squarely apply to the facts of the present case and, he, therefore, prayed for allowing the petition by setting aside the

appointment made by Respondent No.2 in favour of Respondent Nos.3 to 7 to work as Kazis/Naib-Kazis/Quri-un-Nikah.

5) At the first instance, the respondents have disputed locus of present petitioner to challenge appointments of Respondent Nos.3 to 7 by Respondent No.2. Further, the learned Counsel appearing for Respondent Nos.3 to 6, submitted that the judgment relied upon by the petitioner in the case of Qazi Fashiuddin s/o Isamuuddin Vs. State of Maharashtra has been impliedly overruled by the subsequent Division Bench Judgment of this Court in the case of Kazi Ahmed Mohiuddin Farooqui Vs State of Maharashtra reported in 2009 CJ(Bom.) 738. The learned Counsel for the respondents brought to our notice the provisions of Kazi's Act, 1880 also and more particularly Section 4(c) thereof and prayed for dismissal of the petition.

6) We have carefully considered the submissions advanced by learned Counsel for the

respective parties. We have also perused the provisions of the Waqf Act, 1995 and Kazi's Act, 1880. We have also gone through the judgments relied upon by the learned Counsel. As has been submitted by the Learned Counsel appearing for the petitioner, the petitioner has been vested with the powers of Kazi, as it is hereditary office. According to the petitioner, since the ancestors of the petitioner were Kazis, this office has been devolved on him by succession. As against this, it is the contention of the Respondents that the office of Kazi is not an hereditary title. The respondents have relied on the observations of the Division Bench in the case of Qazi Ahmed Mohiuddin (cited supra) made in Para 10 of the said judgment.

7) After having considered the submissions advanced by the learned Counsel for the parties and after having gone through the relevant legal provisions, it appears to us that the question of locus of the present petitioner, would certainly

arise in the present matter also as was raised in the matter of Kazi Ahmed Moinuddin (Supra). As has been observed by the Division Bench of this Court in the case of Kazi Ahmed Moinuddin (cited supra), it is only if the petitioner is able to demonstrate before this Court that he has an exclusive right to practice as Kazi; the question of deciding the issue whether the Waqf Board has right to appoint Kazis, needs to be considered. The petitioner has not brought on record any material to show that he has been appointed as Kazi under the Kazi's Act or that he has exclusive right to practice as Kazi in the area of Latur. In such circumstances, in our opinion, the petitioner has no locus to challenge the order passed in favour of Respondent Nos.3 to 7. In the case of Kazi Ahmed Moinuddin also, the Division Bench has recorded the similar conclusions based on the fact that the petitioner therein had failed in establishing that he had an exclusive right or privilege to perform the functions of Kazi in Parbhani.

8) The learned Counsel for respondents further invited our attention to the observations made by the Division Bench in the case of Kazi Ahmed Moinuddin in regard to the earlier Division Bench judgment in the case of Qazi Fashiuddin. In the subsequent judgment, the Division Bench has recorded a clear finding that the decision rendered by the Division Bench in the case of Qazi Fashiuddin, has to be treated as having been rendered *per incurium* since the same was rendered without reference to the statutory bars. The Division Bench in the subsequent judgment has observed in Para 16 of the judgment that the judgment in the case of Qazi Fashiuddin would have been different if the provisions of Section 4(c) of the Kazi's Act would have been brought to the notice of the Division Bench. It is further observed that in Qazi Fashiuddin's matter, the question of locus was also not considered by the said Division Bench.

9) Section 4(c) of the Kazi's Act, 1880 contemplates that no person can be prevented from discharging any of the functions of Kazis. In view of such provision, we find the challenge raised by the petitioner to the appointment of Respondent Nos.3 to 7 by Respondent No.2, unsustainable. In this view of the matter, the petition must fail; firstly on the ground that the petitioner has no locus to challenge the appointments of Respondent Nos. 3 to 7; and secondly that in view of Section 4(c) of the Kazi's Act, 1880, the challenge so raised is unsustainable. The writ petition, therefore, stands dismissed.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/
fldr. 11.8.15