

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.1041 of 2014

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader appearing for the 1st respondent, learned Standing counsel for the 2nd respondent and the learned counsel for respondent Nos.3 to 8, who are the implead petitioners.

The prayer in the writ petition is as under:

“.... Hon'ble Court may be pleased to issue a writ or writs more appropriately a writ of Mandamus declaring the G.O.Rt.No.13 dated 09.01.2014 is illegal, void and ultra virus and consequently to set aside the same in the interest of justice and equity.”

The case of the petitioner is that he was appointed as Kazi under Section 2 of the Kazis Act, 1880 (for short, “the Act”) vide G.O.Rt.No.11 dated 08.01.2014 for performing the marriages of the Shafayee Sect and the Arab Muslims in Greater Hyderabad for a period of five years. However, the said appointment has been cancelled by the 1st respondent by issuing G.O.Rt.No.13 dated 09.01.2014 and the same is questioned in the present writ petition.

Learned counsel for the petitioner would contend that the petitioner's father originally was working as a Kazi and after his demise, the petitioner submitted a representation dated 04.04.2013 to appoint him as Kazi of Shafayee Sect and the Arab Muslims for Greater Hyderabad municipal area. Pursuant to the said representation and since the petitioner was working as Naib Kazi under his father, he was appointed as a Kazi vide G.O.Rt.No.11 dated 08.01.2014. However, without issuing any notice and without giving any opportunity of being heard, his appointment has been cancelled on the ground that the petitioner involved in conducting contract marriages of poor Muslim girls with Arab Nationals in the old city of Hyderabad and in that connection

he has been arrested by Bhavani Nagar Police vide Crime No.74 of 2011 for the offences under Sections 324, 448 and 506 IPC which amounts to violation of principles of natural justice. In fact, he also brought to the notice of this Court that his appointment was made on 08.01.2014 and the same was cancelled on the very next date i.e., on 09.01.2014.

Per contra, the learned Government Pleader appearing for the 1st respondent filed counter affidavit and submitted that the petitioner managed the lower level staff and seen that the crime registered against him is not mentioned before the enquiry committee. Therefore, for the acts of omissions and commissions of the concerned staff, action was also being initiated. As far as the petitioner is concerned, if the Government has committed any mistake of fact and suppression of any information, the orders issued can be cancelled. In fact, in the case on hand, there is no requirement of issuing any notice or any explanation is required. In fact, in the appointment order itself, it is made clear that the Government may, if it thinks fit, suspend or remove any Kazi appointed under Section 2 of the Act who is guilty of any misconduct in execution of his office or who is for a continuous period of six months absent from the local area for which he is appointed or leaves such local area for the purpose of residing else where, or is declared an insolvent or desires to be discharged from the office or who refuses or becomes in the opinion of the State Government unfit or personally incapable to discharge the duties of office. In the case on hand, the reason mentioned is suppression of pendency of the criminal cases against him.

Learned counsel appearing for the impleaded respondents submitted that by virtue of appointment the petitioner as a Khazi for Shafayee Sect within the limits of the Greater Hyderabad Municipal Corporation, the impleaded respondents' areas are being encroached

upon since they were specifically appointed to perform the marriages in respect of their areas under Section 2 of the Act. On that ground the appointment of the petitioner has to be set aside.

Having heard all the counsel and from the perusal of the material on record, it is revealed that the petitioner, who has been appointed as a Kazi to perform the marriages of Shafayee Sect and Arab Muslims in GHMC has been cancelled under G.O.Rt.No.13 dated 09.01.2014, since the petitioner has suppressed registration of crimes against him in connection with performing contract marriages of poor Muslim girls with Arab Nationals in the old city of Hyderabad. Though there is no prescribed procedure or format in which the application has to be submitted for appointing a Kazi, more particularly, with regard to cancellation of the appointment, but still the Government has to follow the principles of natural justice by issuing a notice calling for explanation as to why the appointment could not be cancelled. Section 2 of the Act contemplates as under:

“2. Power to appoint Kazis for any local area – Wherever it appears to the State Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kazis should be appointed for such local area, the State Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kazis for such local area.

If any question arises whether any person has been rightly appointed Kazi under this section, the decision thereof by the State Government shall be conclusive.

The State Government may, if it thinks fit, suspend or remove any Kazi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the State Government unfit, or personally incapable to discharge the duties of the office.”

Perusal of the above said provision would indicate that on the application made by a concerned person to be appointed as a Kazi, the State Government, after consulting the principal of Muhammadan

residents of such local area, select one or more fit persons and appoint him or them as Kazi. In the provision, it is stated that the State Government, if it thinks fit, suspend or remove any Kazi appointed under the above said section for the reasons mentioned therein. Though the provision is silent with regard to issuance of any notice before suspending or removing any person as Kazi, this Court is of the opinion that when once the petitioner was appointed as Kazi for performing the marriages of the Shafayee Sect and Arab Muslims within the local limits of GHMC, his appointment cannot be cancelled without issuing any notice since cancellation will affect the accrued rights in the order of appointment. That apart, though the 1st respondent in the counter stated that the petitioner suppressed registration of criminal case vide Crime No.74 of 2011 and obtained favourable orders, from the perusal of the counter affidavit, it is clear that registration of a crime against the petitioner is within the knowledge of the 1st respondent. Therefore, it cannot be said that the petitioner has suppressed any such information relating to registration of Crime No.74 of 2011 against him. Further, suppression of any information, more particularly, regarding registration of crime against the person seeking appointment as Kazi is not a ground mentioned under Section 2 of the Act. If that be so, at any stretch of imagination, the reason mentioned in the impugned proceedings while cancelling the appointment of the petitioner as Kazi is not sustainable. On this ground alone, the impugned order is liable to be set aside.

Further, with regard to the submissions made by the learned counsel appearing for the impleaded respondents that the appointment of the petitioner as Kazi to perform the marriages of shafayee Sect and Arab Muslims is overlapping in their area of operation cannot be considered in the present writ petition for the simple reason that the

order under challenge is the cancellation of appointment of the petitioner as Kazi and not with respect to the appointment of the petitioner. That apart, in the writ petition filed by the petitioner, the impleaded respondents cannot seek any favourable orders in their favour. If they desire so, it is always open for them to challenge the appointment order of the petitioner vide G.O.Rt.No.11 dated 08.01.2014.

From the conspectus of the discussion made supra, this Court is of the opinion that the impugned proceedings violate the rights of the petitioner, more particularly, the principles of natural justice since no notice is issued to him. As such, the impugned orders are liable to be set aside.

Accordingly, the writ petition is allowed, setting aside the impugned G.O.Rt.No.13 dated 09.01.2014 cancelling the appointment of the petitioner as Kazi vide G.O.Rt.No.11 dated 08.01.2014.

Miscellaneous petitions, if any, shall stand closed.

Date: 29.10.2018.
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P. KESHAVA RAO, J