

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.23417 of 2019

Hamza Mohideen Malimar

.. Petitioner

..Vs..

1. The Municipal Commissioner
cum Registrar of Marriages,
Karaikal Municipality,
Karaikal - 609 602,
Puducherry.

2. The Mutawalli,
Waqf Nirvaga Sabai,
Mastahan Sahib Darga,
Karaikal - 609 602,
Puducherry.

..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 04.06.2019 made to the respondents with a request to the 1st respondent to register marriages that are conducted by the petitioner and to be solemnized by the petitioner in future, further requested the 2nd respondent to receive the contribution for marriages that may be conducted by the petitioner, thereby issue the Mahamai Receipts and pass appropriate orders on the same within the stipulated time frame fixed by this Court.

For Petitioner : Mr.Srinivasan.S

For Respondents : Mr.C.T.Ramesh, (for R1)
Additional Government Pleader
(Pudhucherry)
Mr.S.Solunder (for R2)

O R D E R

The writ petition has been filed in the nature of Mandamus, seeking a direction to the respondents namely the Municipal Commissioner cum Registrar of Marriages, Karaikal Municipality,

Karaikkal and the Mutawalli, Waqf Nirvaga Sabai, Karaikal to consider the representation of the petitioner dated 04.06.2019 with a request to the 1st respondent to register the marriages which are conducted by the petitioner and to be solemnized by the petitioner in future and that further request to the 2nd respondent to receive the contribution for marriages that may be conducted by the petitioner and issue Mahamai Receipts.

2. The petitioner Hamza Mohideen Malimar resident of No.16/5, Kappappa Colony, Thirunallar Road, Karaikal had stated that, he had been appointed as Naib Kazi by an order dated 05.08.2014 by Hajee N.S.Abdul Hameed Maraicar by invoking powers conferred under Section 3 of the Kazis Act, 1880. It had been claimed by the petitioner that he had been discharging his duties and responsibilities in accordance with rules and regulations till July 2017. Thereafter, Janab Hajee N.S.Abdul Hameed Maraicar who had appointed him, unfortunately expired on 03.06.2017. It was stated that the appointment of the petitioner as Naib Kazi and also similarly placed three persons by proceedings dated 15.06.2017 have become null & void due to the demise of the Regional Kazi. It was stated that however, due to said work of Kazi which is in need for the said office, the petitioner and other persons were authorized to officiate as Kazii in their respective jurisdiction. Hence, the petitioner was authorized to officiate as Kazi in all matters pertaining to office of Kazi within the respective jurisdiction. It is stated that he is discharging his duties as Kazi in his jurisdiction in accordance with Rules and directions issued by the CEO-cum-Secretary, dated 15.06.2017.

3. It is stated that thereafter, by an order dated 02.07.2018, the petitioner was removed from the office along with three other Kazis. The petitioner claimed that the said order has been passed without giving proper notice or even without giving any show cause notice. By an order dated 13.07.2018, the District Collector, Karaikkal had stated that one Haji.M.M.Abdul Jaffar Maraicar has been appointed as the present District Naib. The petitioner had therefore given a representation dated 27.07.2018 to the authorities concerned, requesting the appointment of the petitioner as Kazi or at least permitting him to continue to function as Kazi in the respective jurisdiction of Karaikkal and to set aside the order dated 02.07.2018.

4. It is stated that the petitioner is discharging his duties. It is also stated that the petitioner had earlier filed W.P.No.26396 of 2018 to consider of the representation dated 27.07.2018 and appoint him as a Kazi or to continue him as Kazi in respective jurisdiction. On 10.10.2018, the writ petition has been disposed of, directing the respondents to consider the

representation dated 27.07.2018 and pass appropriate orders on affording due opportunity to the petitioner within six weeks from the date of receipt of a copy of that order. Since no action has been taken thereafter, he had again given a representation on 26.02.2019 and also given further representation on 04.06.2019. It is claimed that no orders have been passed in the said representations. Hence, the present writ petition has been filed.

5. Mr.C.T.Ramesh, learned Additional Government Pleader for Puducherry Government had taken notice on behalf of R1 and Mr.S.Soundhar, learned counsel takes notice for the 2nd respondent.

6. A counter affidavit has been filed by the 2nd respondent. Apart from stating that the writ petition is not maintainable against the 2nd respondent, it had also been stated that the petitioner had no right over the 2nd respondent to compel the 2nd respondent to receive contribution for the marriages conducted by him when he is not recognized by the Government and issue Mahimai Receipts. It is also stated that with respect to the earlier writ petition made in W.P.No.26396 of 2018, the representation dated 27.07.2018 had been disposed of. The petitioner had been removed from the post of Kazi and was directed to hand over the marriage book again to the present Kazi appointed by the District Collector. It is stated that the petitioner is practicing as private Kazi and solemnizing marriages under Section 4 (c) of the Kazis Act, 1880 which is untenable in law. It is stated that Section 4 (c) of the Kazis Act, 1880 is in the form of a saving provision enabling Kazis who performed the functions of Kazi as on date of coming into force of Kazis Act, 1880. It cannot be treated as an enabling provision empowering any private person to assume the role of Kazi after coming into force of the said Act. Hence, the writ petition should be dismissed.

7. Heard the learned counsel appearing on either side.

8. The grievance of the learned counsel for the petitioner is that the petitioner had been earlier appointed as Naib Kazi by an earlier Regional Kazi N.S.Abdul Hameed Maraicar by order dated 05.08.2014. The petitioner has been functioning as Kazi for his region. To the extent, the records are perused, there are no complaints as against the petitioner with respect to the performance of official duties. Unfortunately, the said N.S.Abdul Hameed Maraicar died on 03.06.2017.

9. It is claimed by the respondents that on his death, the appointments as Kazi can be done only by the Government. Hence it is the prerogative of the District Collector to appoint Naib

Kazi. Under these circumstances, the District Collector had appointed Haji.M.Mohammed Ali Maraicar as Naib Kazi. The earlier representation of the petitioner dated 27.07.2018 had been rejected by the authority concerned and order has also been passed on 02.07.2018. Hence, the petitioner had not been appointed again. The learned counsel for the petitioner made a ferment plea that he may be permitted to work as a private Kazi in Karaikkal under Section 4 (c) of the Kazis Act, 1880.

10. The said provisions, Sections 3 and 4 of Kazis Act, 1880 has been extracted below for better understanding:

"3. Naib Kazis

Any Kazi appointed under this Act may appoint one or more persons as his naib or naibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed and may suspend or remove any naib so appointed.

When any Kazi is suspended or removed under Section 2, his naib or naibs (if any) shall be deemed to be suspended or removed, as the case may be.

4. Nothing in Act to confer judicial or administrative powers; or to render the presence of Kazi necessary; or to prevent any one acting as Kazi

Noting herein contained, and no appointment made hereunder, shall be deemed-

(a) to confer any judicial or administrative powers on

any Kazi or Naib Kazi appointed hereunder; or

(b) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(c) to prevent any person discharging any of the functions of a Kazi. "सत्यमेव जयते"

11. The learned counsel places reliance on Section 4 (c) of Kazis Act, 1880 and stated that notwithstanding anything contained in the Act, any person discharging any of the functions of a Kazi cannot be prevented. The learned counsel interprets this as a statement that even a private Kazi can continue to function and there cannot be any prevention of discharge of duties by private Kazi. Unfortunately, that interpretation may not be proper. Under the Act cast the Kazi can appoint is a Naibs under Section 3 of the Act. Thereafter, under Section 4 of the Kazis Act, 1880, it is stated that nothing in the Act can prevent any person from discharging any of the functions of Kazi. Marriages can be registered only by

Kazi who are duly recognized by law. If marriages are registered by persons who are not duly appointed, then the marriages itself can be questionable. This would lead to more practical difficulties. That will have to be prevented and prohibited.

12. In the counter affidavit of the 2nd respondent, it is stated that Section 4 (c) of the Kazis Act, 1880 is only an enabling class to existing Kazi as on date of the Act to continue to function. At any rate, the very purpose of the Act is that the appointment of Kazi should be made by the Government. They are required at the celebration of marriages and the performance of certain other rites and ceremonies.

13. The learned counsel for the petitioner distinguished the present writ petitioner and sought permission to continue as a private Kazi. Unfortunately that right cannot be confirmed by this Court. It can only be by the Government, the Naib are appointed. The said authority is the District Collector. This Court cannot interfere with matters relating to religion. This Court can function within the frame of the secular jurisdiction. It cannot enter into the religious aspects, appointing the petitioner as private Kazi to register marriages. In view of all these facts, I cannot accept the request of the petitioner.

14. However, even though the final orders have been passed in the writ petition, this will not preclude the petitioner by making a fresh and proper application to the concerned authorities on the basis of his earlier request which has not been impugned before any of the authorities, seeking permission to appoint him as a Kazi. If any such representation is given, notwithstanding anything stated in the writ petition today, the authorities may give an opportunity to the petitioner, hear him, examine his credentials depending on their issues and consider the representation in the manner known to law.

15. With the above observation, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

The Municipal Commissioner cum Registrar of Marriages,
Karaikal Municipality,
Karaikal - 609 602,
Puducherry.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.13639/20

+1cc to Mr.S.Srinivasan, Advocate, S.R.No.13662/20

+2cc to the Government Pleader for Puducherr, High Court, Madras
in S.R.No.14354 & 13893/20

W.P.No.23417 of 2019

GP(CO)
nvi/27.05.2020



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