

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.22315 OF 2019

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of mandamus to declare the action of the 1st respondent in issuing G.O.Ms. No.43 dated 23.09.2019 appointing the 2nd respondent as Government Khazi for the Mahabubabad District, as being illegal, arbitrary and in violation of the provisions of Khazi Act, 1880 and unconstitutional.

Heard Sri D. Prakash Reddy, Learned Senior Counsel for Sri S.M. Subhani, learned counsel for the petitioner, the Learned Government Pleader for Minorities Welfare Department and Sri T. Rajnikanth Reddy, learned Counsel for the Respondent No.2.

It is the case of the petitioner that the 1st respondent while appointing the 2nd respondent as Government Khazi for Mahabubabad District under the G.O.Ms. No.43 dated 23.09.2019 has acted in gross violation of provisions of Khazis Act, 1880, inasmuch as the Government did not consult the Principal Muhammadan residents of such local area and also the proposal to appoint the 2nd respondent as Khazi having been rejected on earlier occasion under Memo No.1258/Estt.II/A1/2017/-2 dated 07.08.2017 on the ground that the said proposal has not been recommended by

the District Collector, Mahabubabad letter No.F. No.07/Wakf/MBDD/Quazi/2017 dated 05.07.2017. The main contention urged on behalf of the petitioner is that while the reference under which the District Collector and the Magistrate, Mahabubabad has forwarded the name of the 2nd respondent did not contain the recommendation of the District Collector, the impugned proceeding has been issued on the basis of the same letter of the District Collector which earlier has been rejected as not containing the recommendation. It is contended that in the impugned proceeding, there is no reference to any subsequent material that has been considered for appointing the 2nd respondent as a Khazi for Mahabubabad District and the impugned proceeding, reference to the same proceedings dated 05.07.2019 of the District Collector which it is contended did not have the recommendation of the District Collector.

Learned Government Pleader for Minority Welfare Department placed before this Court the written instructions dated 17.10.2019 on behalf of the 1st respondent and submit that the 1st respondent acted within his powers in issuing the G.O., whereby the 2nd respondent was appointed as Khazi for the District of Mahabubabad. Further, the Learned Government Pleader, submits that the writ petition as filed by the petitioner is not maintainable for the reason that the petitioner was earlier appointed as Khazi for the District of

Warangal, vide G.O. Ms. No. 7, Minorities Welfare (Wakf-1) Department, dated 13.02.2008, which position the petitioner continues to hold and seeks for dismissal of the writ petition.

On behalf of the 2nd respondent, the Learned Counsel would urge that the petitioner was appointed under G.O.Ms. No.7 dated 13.02.2008 for the District of Warangal and in view of carving out of new District of Mahabubabad, the petitioner cannot lay any claim to be continued as a Khazi of the District of Mahabubabad also, inasmuch, as even for one local area, there can be more than one Khazi is evident from the reading of the provisions of Section 2. Further, the learned Counsel would also submit that the term 'local area' as used in Section 2 of the Khazis Act would have to be considered as per the Telangana District Formation Act and cannot be given wider meaning as being sought to be contended by the petitioner. Further, the learned Counsel would also contend that no vested right is created in favour of the petitioner seeking his continuance as a Khazi and no other person being appointed as a Khazi and for his continuance. He would also submit that the petitioner has no locus to maintain the present writ petition as he is continuing as a Khazi for the District of Warangal, while the respondent No.2 has been appointed as a Khazi for the District of Mahabubabad and the petitioner being a non local candidate thereat, the present writ petition is liable to be dismissed.

In order to appreciate the contentions urged on behalf of the petitioner, it is necessary to consider the scope and ambit of the provisions of Section 2 of the Khazis Act, 1880. Section 2 of the Khazis Act confers power on the State Government to appoint Khazis for any local area. The said Section reads as under:

*“.....Power to appoint Khazis 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.....”*

The analysis of the above provision of the Khazis Act, indicate the following:

- (i) power of the State Government to appoint one or more fit persons to be Khazis for such local area;
- (ii) desire of considerable number of Muhammadans resident in local area to have one or more Khazis to be appointed for such local area;
- (iii) The Government after consulting the Principal Muhammadans residents of such local area appoint one or more persons to be Khazis for such local area.

However, the provisions of the Khazis Act does not define the term ‘local area’ or as to what would constitute a considerable number of Muhammadans whose desire is

required to be considered for appointing a Khazi for that local area.

In the absence of the definition of a local area under the Khazis Act, it would be safe to refer to the similar word appearing in other enactments. Since, the power to appoint is bestowed on the State, though the Khazis Act is a Central enactment, the area to which the State exercises its jurisdiction would have to be considered as a local area. The term 'local area' has been used in various State enacted statutes like Entry tax Act, Goods into local area Act.

The term 'local area' has been recently considered by the Constitution bench of the Hon'ble Supreme Court in **Jindal Stainless Limited v. State of Haryana**¹.

In a concurring judgment, the term 'local area' has been defined as:

".....The expression "local area" has been used in various articles of the Constitution, namely, 3(b) 12, 245(1), 246, 277, 321, 323-A and 371-D. They indicate that the constitutional intention was to understand the "local area" in the sense of any area which is administered by a local body, may be corporation, municipal board, district board, etc. The High Court on this aspect held, and in our opinion rightly that the definition does not comprehend entire State as local area as the use of word "a" before "local area" in the section is significant."

Having regard to the above, the area of Mahabubabad which has been carved out into a new District having its own

¹ (2017) 12 SCC 1

local body would have to be considered as a 'local area' which earlier formed part of the District of Warangal. Thus, the State Government is empowered to appoint one or more Khazis for such local area having regard to the desire of the considerable number of Muhammadans residents in that local area; and after consulting the Principal Muhammadan resident of such local area.

Further, it is also to be noted the provisions of Section 2 of the Khazis Act does not put any restriction to have only one Khazi for the local area. On the other hand, the scheme of the Act would indicate that the State Government having regard to the desire of the Muhammadans resident of local area, can have one or more Khazis to be appointed for such local area, thereby implying that for even one local area, there can be more than one Khazi being appointed. Such power being vested in the State Government, is also further strengthened having regard to the specific use of the words in the said Section i.e., "select one or more fit persons and appoint him/them to be Khazis". Having regard to the use of the words "one or more fit persons" and "Khazis" (Plural) would amply make it clear that the appointment need not be of a single person as Khazi, but it can be of more than one to act as Khazis for a local area. Therefore, the contention urged on behalf of the petitioner that he has been appointed Khazi for the entire District of Warangal in 2008 and the respondent

No.2 cannot be appointed as a Khazi is without merit for two reasons –

- Firstly, the local area of Mahabubabad has now become a separate District on account of the creation of new Districts with effect from 11.10.2016.
- Secondly, there is no vested right on the part of the petitioner to claim that he shall alone be continued as a Khazi for the undivided District of Warangal and only Naib Khazis to be appointed under him.

Now turning to the next submission urged on behalf of the petitioner, that there is no justifiable reason shown not to take the recommendation of the Collector which hitherto formed the basis for appointment of Khazis, particularly, when the State Government is to act upon the desire of considerable number of Muhammadans not being specified under the Act. Learned Senior Counsel for the petitioner would urge that in the absence of any objective mechanism to measure as to what would constitute a considerable number of Muhammadans, the State would act through the recommendation of the Collector who would have the desire of the local people to have one or more Khazis verified and in the absence of such exercise being undertaken in the present case which formed the basis for rejection of the request to appoint the 2nd respondent on earlier occasion in 2017 could not be considered as valid without there being any

subsequent change, merely on account of passage of time and that the same is in non-compliance with Section 2 of the Khazis Act and does not sustain the judicial scrutiny.

In opposition to the above submission of the learned Senior Counsel, the learned Government Pleader would submit that the provisions of the Act, nowhere specifies that the recommendations of the Collector is mandatory nor does it impose any restriction on the power of the State Government in making such appointments. The Learned Government Pleader would further submit that the State would act through its officers not only through the Collector, but the same would include the other officials of the State Government like Secretary and other higher rank officials. Though the said submission of the learned Government Pleader on a plain reading of the provision would indicate so, but, however when the State has been acting all these years through the Collector to forward such request for appointment of one or more persons as Khazis along with the District Collector's recommendation would go to show that the said requirement was felt necessary, as it is the Collector who being the head of a particular local area would be in a position to assess the desire of the considerable number of Muhammadans in that local area and would also hold consultation with the Principal Muhammadans residents of such local area as the Secretary though higher in rank would

not be in a position to have such data being collected by himself. Further, it is also to be seen that the request for appointment of a Khazi is also to be forwarded through the District Collector thereby implying that the District Collector has been acting as a Nodal Authority in relation to forwarding the request for appointment of one or more Khazis along with his recommendations. Thus, the submission of the learned Government Pleader that the recommendation of the Collector not being necessary or mandatory in the facts of the present case, it is not sustainable. However, if the State chooses to act through a Secretary, it can do so, subject to placing on record, the information that is required for appointing one or more Khazis as provided under the Act.

In the facts of the present case, though it is stated that on the basis of the recommendation of the Secretary, the 2nd respondent has been appointed and such appointment cannot be in the absence of complying with the basic requirement as specified in Section 2 viz., -

- (i) desire of considerable number of Muhammadans residents in local area to have one or more Khazis appointed.
- (ii) the State Government if it thinks fit after consulting the Principal Muhammadan residents of the local area.

Though the file note relating to the appointment of the 2nd respondent has been placed before this Court, the same does not indicate anywhere as to the desire of considerable number of Muhammadans resident in the local area of Mahabubabad desiring to have a Khazi has been taken note of.

On the contrary, the file note indicates that on more than two occasions when the application of the 2nd respondent is sought to be processed, it was felt desirable to have the recommendation from the District Collector. Even in the written instructions produced before this Court, it is stated that no recommendation from the District Collector Mahabubabad is received till date. The sudden action of the 2nd respondent being appointed as Khazi is sought to be justified on the ground that the Secretary having discussed personally with the District Collector, Mahabubabad and after such discussion, the Secretary has recommended for the appointment of the 2nd respondent as Khazi. The said submission as per the written instructions also cannot be accepted because the file note does not indicate or does not pen down any such discussion being taken place as to the recommendation of the Collector in this regard. On the contrary, the file note indicates that it is based on the direction of the OSD to Special Secretary to C.M., the appointment of the 2nd respondent is being made. Thus, the submission put forth by the learned Government Pleader that

it is the Secretary in consultation with the District Collector had appointed the 2nd respondent as Khazi, is without merit and is liable to be rejected.

Now turning to the other submission urged on behalf of the respondent with regard to the petitioner not having locus to maintain the present Writ Petition is concerned, it is to be seen that the petitioner is laying his claim on the basis of the G.O. that has been issued appointing him as a Khazi for the District of Warangal, which hitherto included the area of Mahabubabad also. Since, with the present appointment, the area of his operation having been reduced, the petitioner is seeking to enforce his right to exercise jurisdiction on the basis of the territory of the District which was considered in the year 2008. Further, the challenge in the writ is also to the infraction to the provisions of the Act, in appointing the 2nd respondent as Khazi, which on the basis of the conclusions arrived at as above, justify the action of the petitioner in invoking the writ jurisdiction. Thus, it cannot be said that the petitioner lacks locus to maintain the present Writ Petition.

Having reached the above conclusion with regard to the local area and also the procedure that is required to be followed with regard to the appointment of the Khazis, this court is of the view that the impugned G.O. No.43 dated 23.09.2019 issued by the 1st respondent appointing the 2nd

respondent as Khazi for the District of local area of Mahabubabad District cannot be sustained as it suffers from procedural irregularity and accordingly, the same is set aside, leaving it open for the authorities concerned to process the appointment of the 2nd respondent by acting in accordance with the requirements of provisions of Section 2 of the Khazi Act, 1880.

Subject to the above observations, the Writ Petition is allowed. No order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 10.01.2020.
MRKR

