

D/L. 8.
May 14, 2024.
MNS.

WPA No. 12766 of 2024

Kabirul Sk. and another
Vs.
The State of West Bengal and others

Mr. Rudranil De,
Mr. Himadra Kumar Mahata,
Mr. Ziaul Haque

... for the petitioners.

Mr. S. Bandopadhyay,
Mr. R. Ganguly

...for the State.

1. Affidavit-of-service and undelivered envelopes filed in Court today be kept on record.
2. Learned counsel for the petitioners submits that the petitioners have respectively applied for the post of Muhammadan Marriage Registrars (MMRs) for two police stations areas.
3. It is contended that although Section 3 of the Bengal Muhammadan Marriages and Divorces Registration Rules, 1876 (1876 Act) contemplates two different MMRs for each designated area, one from the Sunni and other from the Shia sect and the petitioners belong to the Shia sect, the State refused to

take cognizance of the petitioners' applications.

4. In the impugned refusal dated December 13, 2023, it has merely been intimated that the State Government has no specific information regarding the number of Shia Muhammadan residents in Berhampore or whether those residents need the service of a Muhammadan Registrar from the Shia sect. Therefore, the respondent-State has not arrived at the policy decision for appointment of a Muhammadan Registrar from Shia sect in Berhampore, District Murshidabad. It has also been assured in the said communication that if such a policy decision is taken, the District Registrar, Murshidabad will invite applications for suitable candidates and deserving candidates would be appointed.
5. It is argued that the Shia community not being represented in the areas, insofar as the MMR is concerned, the petitioners' applications ought to have been considered by the State.
6. Learned counsel for the State respondents contends that Section 3 of the 1876 Act does not mandate the State to appoint more than one MMR for a particular area.

7. Drawing the court's attention to the proviso to Section 3 of the 1876 Act, it is pointed out that it stipulates that no more than two persons shall be licensed to exercise the said function within the same limits. It further provides that when two persons are so licensed to act within the same limits, the one shall be a member of the Sunni, and the other of the Shia sect.
8. Hence, the language of the proviso, it is argued, itself indicates that two is the upper limit of the number of MMRs and there is no compulsion on the State to necessarily appoint two MMRs for each area.
9. In fact, it is fairly submitted that the State is considering whether to take the service of additional MMR; if so, the State would be appointing people from different sects in the two vacancies for each area.
10. Upon a perusal of Section 3 of the 1876 Act, it is found that there is substance in the submissions of the State. Section 3 nowhere mandates the State to appoint more than one MMR for a particular territorial limit.
11. Rather, the proviso thereto merely stipulates that the upper limit of appointments shall be

two and if two persons are so appointed, only then, one shall be a member of the Sunni and the other of the Shia sect.

12. Learned counsel for the State has also argued that there is no bar in law for an MMR of one of one of the communities to act as Marriage Registrar for the other, neither do I find from the materials on record that there is any such restriction in members of one of the sects to act as MMR for the other.

13. In such view of the matter, it is entirely within the discretion of the State respondents to opt for a single MMR for a particular police station area. It is not for the Court to dictate the Legislature or the Executive, who are elected representatives, to make policy decisions, which fall within the domain of the Executive and the Legislature exclusively.

14. In such scenario, no mandamus can be issued on the prayer of the writ petition.

15. Accordingly, WPA No. 12766 of 2024 is dismissed.

16. However, nothing in this order shall preclude the State respondents, in the event so felt necessary, to create a second vacancy for the concerned police station areas for MMRs, in

which case, the State respondent shall follow the established procedure and law and invite applications in that regard, ensuring that one from each of the Muhammadan sects is appointed in the two vacancies for each area.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)