

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

HEARD ON: 20.03.2024

DELIVERED ON: 20.03.2024

**CORAM:**

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 1622 of 2023**

**With**

**I.A. No. CAN 1 of 2023**

**+**

**CAN 2 of 2023**

**The State of West Bengal**

**Vs.**

**Shagufta Ara & Ors.**

**+**

**F.M.A. 902 of 2023**

**With**

**I.A. No. CAN 1 of 2023**

**The State of West Bengal**

**Vs.**

**Shagufta Ara & Ors.**

**Appearance:-**

**Mr. Swapan Banerjee**

**Mr. Supratim Dhar**

**.....for the appellant**

**Mr. Soumen Kumar Dutta**

**Sk. Sayan Uddin**

**.....for the respondent/writ petitioner**

**JUDGMENT**

***(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)***

1. Both the above appeals are disposed of by this common order and judgement as the subject-matter is one and the same. In M.A.T. 1622 of 2023, there is a delay of 399 days in filing the appeal. The prayer for condonation of delay is vehemently opposed by the respondent/writ

petitioner and an affidavit-in-opposition has also been filed stating that sufficient cause has not been shown for condoning the inordinate delay. However, we find that the appellant has also filed another appeal being, F.M.A. 902 of 2023 challenging a subsequent order passed by the learned Single Bench dated 9<sup>th</sup> August, 2023 in W.P.A. 17831 of 2023 filed by the very same writ petitioner, which is a fall out of the direction issued in W.P.A. 2790 of 2022 dated 15<sup>th</sup> June, 2022. Thus, in order to avoid any technical objection, the State has filed M.A.T. 1622 of 2023 and requested the matter to be heard along with F.M.A. 902 of 2023.

2. Thus, for such technical reason, the delay has occurred and therefore, we exercise discretion and condone the delay in filing the appeal.
3. Accordingly, CAN 2 of 2023 in M.A.T. 1622 of 2023 is disposed of.
4. The issue involved in these appeals relate to a temporary license granted to the respondent/writ petitioner to perform the duties as a Muslim Marriage Registrar. Though in earlier proceedings orders had been passed in favour of the writ petitioner, the same did not fructify into a license, which necessitated the writ petitioner to approach this Court. The fact remains that the temporary license was granted on 22<sup>nd</sup> June, 2020, but however, the writ petitioner was not permitted to perform his duties as a temporary Muslim Marriage Registrar. When the first writ petition was heard by the Court as recorded in its order dated 15<sup>th</sup> June, 2022, the State had handed over an instruction given by the Department stating that necessary directions may be given to the department for taking necessary steps in terms of the order of the department dated 22<sup>nd</sup> June, 2020 by which the State Government accorded approval for appointment of the writ petitioner

as temporary Muslim Marriage Registrar. Based on such instruction given by the Government, the writ petition was disposed of to issue the temporary Muslim Marriage Registrar license to the writ petitioner. Subsequently, the same having not been complied with, the second writ petition came to be filed by the writ petitioner in W.P.A. 17831 of 2023 and the said writ petition has been allowed.

5. The contention of the appellant is that the temporary license granted is not in accordance with the notification issued by the Government of West Bengal in exercise of the powers conferred by Section 24 of the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 read with Rule 2(2) of the Transferred Subject (Temporary Administration) Rules.
6. It is the submission of the learned counsel appearing for the State that in terms of the said Rules, more particularly in Rule 3(b), the procedure for making temporary appointment has been stipulated and this procedure has been followed in the case of the respondent/writ petitioner. Furthermore, in terms of the Rule 4, the qualifications have been prescribed and the respondent/writ petitioner does not possess sufficient acquaintance with Arabic language and Muhammadan Law of Marriage and Divorce and consequently not entitled for license.
7. This submission cannot be considered in the present appeals as if according to the appellant/department, the license was erroneously granted or the temporary license granted was not in accordance with the Notification dated 14<sup>th</sup> August, 1929. It will be well-open to the department to issue a show-cause notice to the respondent/writ petitioner and proceed to take steps for cancellation of temporary license in

accordance with law. However, until such procedure is adopted, the respondent/writ petitioner is entitled to enjoy the license and perform the functions as a temporary Muslim Marriage Registrar.

8. Therefore, we are not inclined to interfere with the order passed in the writ petition.
9. However, the appeals along with all connected applications stand disposed of by granting liberty to the appellant/department to initiate appropriate action, if in the opinion of the appellant/department the respondent/writ petitioner is not qualified to be appointed as a temporary Muslim Marriage Registrar.
10. The appellant/department are at liberty to take action in accordance with law after affording reasonable opportunity to the respondent/writ petitioner.
11. We find that the learned Single Bench has imposed a cost of Rs.20,000/- on the appellant/department, which we find would not be necessary in the facts and circumstances of the case. Accordingly, the direction issued imposing cost of Rs.20,000/- is set aside.
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(T.S. SIVAGNANAM)**  
**CHIEF JUSTICE**

I agree.

**(HIRANMAY BHATTACHARYYA, J.)**

Pallab/KS AR(Ct.)