

30.07.2024
Sl. No.3(DL)
srm/CP

W.P.A. No. 23303 of 2023

Md. Akmal Hossain

Versus

The State of West Bengal & Ors.

Mr. Saptangshu Basu,
Mr. Saumyen Datta,
Mrs. Dolon Dasgupta

...for the Petitioner.

Mr. Anirban Roy, Id. GP
Mr. Sk. Md. Galib,
Mr. Tamal Taru Panda

...for the State-respondents.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,
Mr. Samrat Chakraborty

...for the Respondent No.8.

1. The writ petition has been filed challenging a reasoned order passed by the Inspector General of Registration and Commission of Stamp Revenue, West Bengal. By the order impugned, the authority came to the conclusion that the procedure involved for appointment of the respondent No.8 as a Muslim Marriage Registrar (MMR) for Bhagwangola Police Station was not in accordance with the rules.
2. The petitioner contends that he is the existing MMR who was appointed on the recommendation of the Governor, in accordance with the provision of the Bengal Muhammadan Marriages and Divorces Registration Act, 1876 and the rules framed

thereunder. According to the petitioner, his father was the MMR and on the physical incapacitation of his father, the petitioner was appointed as the MMR on compassionate grounds as per the recommendation of the Governor.

3. It appears that the petitioner was in probation. It further appears that the petitioner was suspended and such suspension order was stayed by the High Court.
4. Mr. Saptangshu Basu, learned Senior Advocate made the following submissions:
 - (a) Unless there was a vacancy declared by the government, no appointment either on temporary basis or on permanent basis, could not be made.
 - (b) A well known Trinamool leader had recommended the appointment without following the law.
 - (c) The law does not provide for appointment of two MMRs within the same police station with a distinction that one would belong to the Shia sect and other would belong to Sunni sect.
 - (d) When the petitioner was appointed, the fact that he belonged to the Sunni sect was not taken into consideration. He was appointed as an MMR to register marriages and divorces of

Mohammedans without there being any discrimination between the sects.

- (e) The authority could not import a sense of distinction or difference amongst the Mohammedans by categorising them as Shia or Sunni.
- (f) The document showing the list of vacancies for the district of Murshidabad in respect of MMRs, was a forged document as the memo did not pertain to declaration of vacancy. Reliance is placed on the answer to the queries received under the Right to Information Act.
- (g) Without there being a proper mechanism for determination whether a person belonged to the Shia sect or the Sunni sect, appointment on the basis of such sects was contrary to the statute.
- (h) There must be a determination by the state government as to whether two MMRs, one belonging to the Shia sect and the other to the Sunni sect was necessary. Thereafter, a declaration should have been made on the basis of such determination that Bhagwangola Police Station required another MMR belonging to the Shia sect. Upon compliance of the said process, could the government declare a vacancy indicating the requirement of a Shia MMR and then to proceed with the selection. Such

exercise not having been undertaken, would itself indicate that the appointment of the respondent No.8 was vitiated and void, not only being contrary to the rules, but also in the absence of any substantial satisfaction of the State Government that an MMR belonging to the Shia sect was required for registration of marriages and divorces of Mohammedans, within Bhagwangola Police Station.

5. Md. Galib, learned Advocate appearing on behalf of the State-respondents submits that Section 3 of the said Act 1876 empowers the government to appoint more than one MMR in the locality. It was entirely the prerogative of the state to decide whether one MMR or two MMRs would be appointed. The proviso states that in case of appointment of two MMRs, one must belong to the Shia sect and the other to the Sunni sect. Relying on such enabling provision, the appointment was made on temporary basis. For appointment on temporary basis, no declaration of vacancy was required to be made. Invitation of candidatures and selection by a board is not necessary. The District Registrar can appoint on his own. Such appointment was to be approved by the government through the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal. There cannot be any method or

mechanism for identification of Shias and Sunnis, as the distinction between the two sects are based on the custom, usage and rituals they perform.

6. Mr. Partha Pratim Roy, learned advocate appearing on behalf of the respondent no. 8, submits that the petitioner does not have any locus to challenge the appointment of the respondent no. 8. The government, in exercise of power under Section 3 of the said Act, had appointed the respondent no. 8 on temporary basis. Reliance has been placed by Mr. Roy on the list forwarded by the District Registrar, Murshidabad, Government of West Bengal to the IGR & CSB, WB, Kolkata – 1. From the list it appears that there was a vacancy at Bhagwangola Police Station for the post of Shia MMR.
7. The issue involved in this writ petition is whether the appointment of respondent no. 8 on temporary basis as an MMR under the Bhagwangola Police Station should be set aside by this court or not. On an earlier occasion, a writ petition was filed before this court, challenging the said appointment on two grounds.
 - a) The appointment was made in an arbitrary manner on the recommendation of a powerful person belonging to the present ruling dispensation.

b) There was a doubt as to whether the respondent no. 8 belonged to the Shia sect or not.

The said writ petition was disposed of with the following order:-

“First, whether the appointment, albeit made on a temporary basis, was actually made from the Shia sect of the Mohammedan community. The subsequent documents placed before the Court cast doubt on this aspect.

Second, whether the selection process is vitiated by the intervention of several functionaries of the ruling dispensation of the State who went out of their way to ensure the participation and selection of the private respondent to the concerned post.

Both these aspects are serious and require to be revisited by the Inspector General who is the authority to do so under Rule 17 of the Notification of 1929. The Inspector General shall take into account not only the two factors stated above but also whether a temporary appointment can continue without a permanent appointment being made by way of an open and transparent selection process. The present facts would show that the private respondent was appointed on 6th June, 2018 and the formal license was issued on 14th June, 2018.

WPA 13099 of 2022 is accordingly disposed of with a direction on the respondent no. 4 being the Inspector General of Registration to reconsider and revisit the impugned appointment including the issues stated above and come to a reasoned decision within three weeks from today. The petitioner and the private respondent shall be heard before the respondent no. 4 passes a reasoned order.

Needless to say, the order shall be made strictly in accordance with the provisions of the Act and the Notification of 1929.

The reasoned order shall be made available to the petitioner within a week from the date on which such order is passed.

It is made clear that the private respondent shall cease to hold office from the date on which the decision is given, if such decision goes against the private respondent.”

8. Pursuant to such direction, the order impugned was passed. The authority has held that Section 3 of the said Act empowered the government to appoint more than one MMR. The only condition attached to such appointment was that the MMRs so appointed, should belong to the two different sects, Shia and Sunni. According to the authorities, the petitioner was a Sunni and his appointment could not operate as a bar to the appointment of another MMR within the same police station, belonging to the Shia sect.

Section 3 of the said Act is quoted below:-

“3. It shall be lawful for the [State Government to grant a license to any person, being a Muhammadan, authorizing him to register Muhammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration]; and in like manner it shall be lawful for the said-[State] Government to revoke or suspend such license:

Provided that no more than two persons shall be licensed to exercise the said function within the same limits; and provided further 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.”

9. Thus, there is no doubt that law empowers the government to appoint two MMRs, if the government so thinks fit. The only condition attached to such appointment is that one MMR should be a Sunni and the other should be a Shia. This law has not been given any overriding effect. The rules deal with the procedure to be followed for appointment of temporary MMR. Such rule does not prohibit the government from deciding to appoint a second MMR in a locality, if the government deems it necessary. This is a policy decision. However, there are documents at pages 113 to 116 in the writ petition which contains the list of the MMRs attached to the Murshidabad District against Bhagwangola Police Station. A vacancy with regard to the post of an MMR belonging to the Shia sect, has been mentioned.
10. The petitioner submits that under the Right to Information Act, an information was received that the said document was not a correct one. It is alleged that the document was a forged one, and no such vacancy list had ever been produced before the concerned authority. The reply under the Right to Information Act shows an extract of a communication registrar indicating that Memo No. 772 was some other document, but not the

communication of the vacancy list. However, this court does not have any mechanism to decide the authenticity of the documents at pages 114 to 116, as to whether they were forged or fabricated.

11. The respondent no. 8 was appointed on June 6, 2018 in compliance of the Judicial Department's Memo dated March 23, 2018 as a temporary MMR. The appointment was made in exercise of power conferred under Rule 3(b) of the MMR Rules, The appointment is valid till the appointment of a permanent MMR for the said post from the Shia sect or until the licence is revoked or suspended. The appointment is temporary and does not confer any right of claim in future, for a permanent post.
12. From an application made by the petitioner's father under the Right to Information Act to the Secretary, Judicial Department, Government of West Bengal, it appears that the petitioner's father had raised an objection to the action of the District Registrar, Murshidabad, who had, under Memo No. 1120/DR(MSD), No. 1121/DR(MSD) & No. 1122/DR(MSD) dated August 25, 2017, issued notices inviting applications for appointment of Muslim Marriage Registrar, particularly from Shia sect, at Bhagwangola, Lalgola & Nowda police station, in the District of

Murshidabad. Many related queries were made in the said application, particularly, whether the Census Department or any other department had given any statistics as to the existence of the Shia sect in Bhagwangola. A communication was also received by the petitioner's father that no data had been received from the Census authority with regard to the Shia population in Bhagwangola. These documents have been annexed by the petitioner in one of the supplementary affidavits affirmed on July 10, 2024 and it shows that the government had been taking steps to appoint an MMR belonging to the Shia sect in Bhagwangola long time ago.

13. Thus, the contention of Mr. Basu, learned senior advocate that there was no formation of opinion of the government that a Shia MMR would be required in Bhagwangola cannot be accepted. The documents which the petitioner has annexed to the supplementary affidavit and which are discussed herein, above speak otherwise.
14. The law empowers the government to appoint two MMRs in a particular police station with the condition that one should be a Shia and the other should be a Sunni. The government has relied upon certifications by an MLA to satisfy itself that the respondent no. 8 belonged to the Shia sect. It

is not the case of the petitioner that he is a Shia and two Shias cannot be appointed.

15. The writ court cannot impose conditions upon the government as to how the communities will be identified. With the diversity, ethnicity and varied practice of different cults and segments of each religious community and the divergence of religious practices observed by Indians, there cannot be a law to identify such sects or communities. Usually different sects of the same religious group follow different religious practices, usages and customs. Their identity is based on such religious practices which they observe. The Mohammedans also have two prominent sects of Shias and Sunnis, who have very distinct religious practices. A law cannot be formulated or framed or laid down by the court as to how they shall be identified. The way they practice their religion is their identity and the government has formulated a reasonable way to identify the sects, on the basis of a certificate given by a local MLA. This practice is widely prevalent. When it comes to grant of heir-ship certificates, which may not be supported by law, but such documents are heavily relied upon by the Municipality, Land Reforms Department etc. in case of mutation of

the children of a deceased land owner or a raiyat etc.

16. A writ court cannot formulate guidelines to be followed by the government with regard to identification of communities / religious groups, cults etc. Whether a Shia MMR was required for registration of marriages and deaths of Mohammedans of a particular locality, is a policy decision. Not only the petitioner, but the petitioner's father also appears to have resisted the decision of the government to appoint an MMR from the Shia sect. The authority has proceeded on the basis of Section 3 of the said Act. The appointment is temporary in nature. Of course, no appointment can continue endlessly on temporary basis and the government must decide whether a permanent appointment should be made in accordance with law, shortly. Reduction of the income of the petitioner is not a ground for judicial review.
17. The writ petition is accordingly disposed of. There shall be no order as to costs.
18. All parties are to act on the basis of server copy of this order.

(Shampa Sarkar, J.)