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W.P.No. 35402 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No. 35402 of 2003

and

W.M.P.Nos.43027 & 43028 of 2003

M. Mustafa

... Petitioner

Vs

1. The Tamil Nadu Wakf Board,
Rep. by its Secretary,
New No. 7, Old No. 4, 9th Cross Street,
Indira Nagar, Chennai - 20.
2. Anjuman Islamia Mosque Managing Committee,
Rep. by its President
Yousuf Khan @ Bawa Jaan,
Pettai, Namakkal.
3. Tipusultan Kottai Mosque Managing Committee,
Rep. by its President,
Shafiullah, Kottai, Namakkal.
4. Noorul Amin Mosque Managing Committee,
Rep. by its President Peeran Bai,
Maruthi Nagar, Namakkal.
5. The Tamil Nadu Government,
Chief Khazi,
323, T.T.K.Road, Diwan Bagh,



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Royapettah, Chennai – 14.

6. Advocates Meelad Forum
Represented by its Secretary,
Mr.K.Fazlur Rahman,
No. 167, M.S.Koil Street,
Royapuram, Chennai - 13.

..... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned circular dated 02.04.2003 issued by the fifth respondent and quash the same and consequently direct the first respondent to restrain public mosques from any manner restraining or preventing the petitioner and other jamathars from entering into and offering prayers according to their tenets in the mosques.

For Petitioner : Ms.M.Nuzhath Khanam
for Mr.I.Kowser Nissar

For R1 : Mr.Avinash Wadwani

For R2 to R6 : No appearance

ORDER

This writ petition is filed challenging the impugned order that is in the nature of a circular issued by the fifth respondent, namely the Chief Khazi of the Tamil Nadu Government.

2. The brief facts leading to the writ petition are that, by the circular,



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certain religious practices while performing the Namaz in the Mosques are said to be regulated. The Chief Khazi has given a direction that nobody should pray without covering the head with a cap. In the process of worship during “athahayath” whether the index finger should be moved upwards symbolically or not is sought to be regulated with the condition that nobody should do the same.

3. The learned counsel for the petitioner contends that both the said directions issued by the Chief Khazi do not form part of religious beliefs and there is a subsect which believes otherwise.

4. The claim of the petitioner is resisted by filing counter affidavits, including the counter affidavit by Chief Khazi that there is no such religious belief and if any person does that, the same would only be against the religious belief. This Court, under Article 226, cannot decide the matter. Both sides have to let in evidence before the appropriate Civil Court as to whether the issues propagated by the Chief Khazi is in accordance with the Prophet’s teaching and Hadis, etc., or whether there are different subsects following different kinds of procedures during the performance of Namaz.



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5. Be that as it may, the only aspect this Court can decide is that whether the Chief Khazi can issue such a binding circular to all Mosques. The Chief Khazi is appointed under the Khazi's Act 1880 (Act 12 of 1880). The said Act contains four sections. Section 1 provides for the extent to which the Act applies. Section 2 confers the power to the State government to appoint Khazi. Section 3 empowers the Khazi to appoint Naib Khazi's. Section 4 states that nothing contained in the Act and no appointment made, shall be deemed to confer any judicial or administrative powers on any Khazi' or Naib Khazi' appointed or to render the presence of Khazi' or Naib Khazi' necessary at the celebration of any marriage or the performance of any rite or ceremony or to prevent any person from discharging any of the functions of a Kahzi'. Section 4 is extracted hereunder and which is read as follows:-

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



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

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6. In this regard, it is essential to advert to the judgment of this Court in ***A.Ali Akbar Versus District Munsiff, Pattukottai and others (C.R.P.No. 2030 of 1992)***. By referring to the judgement of the Allahabad High Court in ***Mohammad Wasi and another versus Bachchan Sahib*** reported in ***1955 AIR (All) 68***, this Court held the following about the mosques and the relevant portion is extracted:

"From all the authorities cited above, it would appear that it is now well settled that

(1) a Mosque is dedicated for the purpose that any Muslim belonging to any sect can go and say prayers therein;

(2) it cannot be reserved for Muslims of any particular denomination or sect;

(3) no one can claim to have the forum of congregational prayer usually said in a mosque altered to suit him;

(4) Even though the congregational prayers are said in a mosque in a particular form any Muslim belonging to any other sect can go into a mosque and say his prayers at the back of the congregation in the manner followed by him so long as he does not do anything mala



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fide to disturb the others;

(5) the object of the dedication can neither be altered nor the beneficiaries limited or changed; and

(6) a Muslim will have a cause of action if he is deprived of his right to say prayers in a wherein mosque or is prevented from doing so.

Mr.Mohan Parasaran next cited the following decision reported in Amir Hussain Shah it v. Hafiz Ghulam Rasul, AIR 1936 Peshawar is held as under at page 65;

“Every Mohomedan has right to say his prayers in any mosque and behind the regular imam provided he does not disturb or interrupt other worshippers. A particular sect is not however entitled to have a separate call of prayer made or to hold a separate congregation behind an imam of their own, as it would lead to insurmountable difficulties and continual friction.

The declaration that certain persons are entitled to say their prayers in a particular mosque cannot however be refused merely on account of the fact that to grant such a declaration would lead to a breach of peace. A person is not to be prevented from exercising a legal right merely because other persons object to his doing so.”

7. I am of the view that while the Chief Khazi's view has to be respected, the appointment under the Khazi's Act does not grant the power to the Chief Khazi, any administrative power over the Mosques to decide that no Mosque should allow such practices. There is no other enabling provision for



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the Chief Khazi to issue such a binding circular on the Mosques.

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8. In view thereof, this writ petition stands allowed. The impugned circular dated 02.04.2003, bearing reference 'nil' issued by the fifth respondents stands quashed. This Court has not expressed any opinion as to whether the claim of the petitioner herein or the view of the Chief Khazi herein is correct or not and it is for the parties concerned to appropriately agitate the matter before the appropriate fora. Consequently, connected miscellaneous petition are closed. No Costs.

16.12.2024

Neutral Citation: Yes
nsl

D.BHARATHA CHAKRAVARTHY, J.

nsl



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To

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