



W.P(MD)No.7003 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7003 of 2024

and

W.M.P.(MD)Nos.6511, 6512 and 6513 of 2024

A.Syed Khaja Mueenudeen

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Backward Classes / Most Backward Classes
and Minorities Welfare Department,
Fort St.George, Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.M.Saboor Mohideen.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made by the 1st respondent in G.O.(D) No.71/Backward Classes, Most Backward Classes and Minority Welfare (S1) Department dated 21.08.2023 and consequently forbear the respondents from interfering with the petitioner's right to serve as a Kazi for the Madurai Town.



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For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.V.Nirmal Kumar,
Government Advocate for R1 & R2.

ORDER

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents 1 and 2. Considering the nature of relief to be granted, issuance of notice to the third respondent is dispensed with.

2.The petitioner was appointed as Kazi for Madurai Town vide G.O.(Ms)No.921, Home Department dated 22.04.1981. The petitioner herein earlier filed W.P.(MD)No.17093 of 2022 challenging the order dated 15.06.2022 passed by the District Collector, Madurai constituting a selection committee for appointing one or more fit persons as Kazi for Madurai District. The writ petition was dismissed by pointing out that the constitution of the District Level Selection Committee will not in any way affect the rights of the petitioner and that the writ petition was prematurely filed.

3.Vide G.O.(D)No.71 Backward Classes, Most Backward Classes and Minority Welfare Department dated 28.01.2023, the third respondent has been appointed as Kazi for Madurai District for a period of three years.



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4.The question that calls for consideration is whether the impugned appointment displaces the petitioner.

5.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed.

6.The learned Government Advocate for the official respondents submitted that interference is not warranted in this case.

7.I carefully considered the rival contentions and went through the materials on record. The Kazis Act, 1880 governs the appointment of Kazi. Section 2 of the Kazis Act is as follows:-

“2. Power to appoint Kazi’s 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 Kazi’s 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 Kazi’s for such local area.

If any question arises whether any person has been rightly appointed Kazi’ under this section, the decision thereof by the State Government shall be conclusive.



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The State Government may, if it thinks fit, suspend or remove any Kazi' appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the State Government unfit, or personally incapable, to discharge the duties of the office."

8.It provides for appointment of more than one Kazi for a local area. No ceiling limit has been statutorily prescribed. In fact, when a Writ of Quo Warranto was filed against the writ petitioner's appointment, the Government filed counter affidavit clarifying that the Government may appoint one or more Kazi for a local area and that there is no such designation as main Kazi or additional Kazi, if more than one Kazi is appointed. It was further stated therein that the writ petitioner herein was appointed vide G.O.(Ms)No.921 dated 22.04.1981 in addition to the then existing Kazi. That does not mean that the writ petitioner herein was to be termed as additional Kazi. A categorical statement was made that Kazis are equal in the eye of law.

9.The petitioner has probably filed this writ petition because of an observation made vide order dated 10.11.2023 in W.P.(MD)No.12253 of 2016.

The said writ petition was filed in the nature of Writ of Quo Warranto



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challenging the petitioner's appointment. The writ petition was dismissed as infructuous on the ground that the petitioner herein had ceased to be Kazi.

Paragraph Nos.2 and 3 of the said order read as follows:-

“2. This Writ Petition was admitted in the year 2016 and had been pending and in the meantime, events overtook the cause. The fourth respondent is no more the Kazi. This is clear from the Gazette produced by the learned Standing Counsel for the third respondent. As per the Gazette, the Government has appointed one M.Saboor Mohideen S/o. Mohamed Shereef, residing at Plot No.252/1, TNHB Colony, Mela Anuppanadi, Madurai, as the Kazi for Madurai District for the period of three years from 21.08.2023.

3. Since the fourth respondent is no more Kazi for Madurai District, the cause of action for the Writ Petition does not survive. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.”

10.I will not non-suit the petitioner on the ground that the petitioner has to work out his rights only before the Hon'ble Division Bench in the writ appeal. A moot question is whether a letters patent appeal would lie against a mere finding when the main writ petition has been dismissed. However, the petitioner has filed the present writ petition only on the ground that by the impugned government order, he has been apparently dislodged. The petitioner will have to try his guns only on the order dated 10.11.2023 in W.P.(MD)No. 12253 of 2016. The petitioner is probably barking at the wrong tree. The

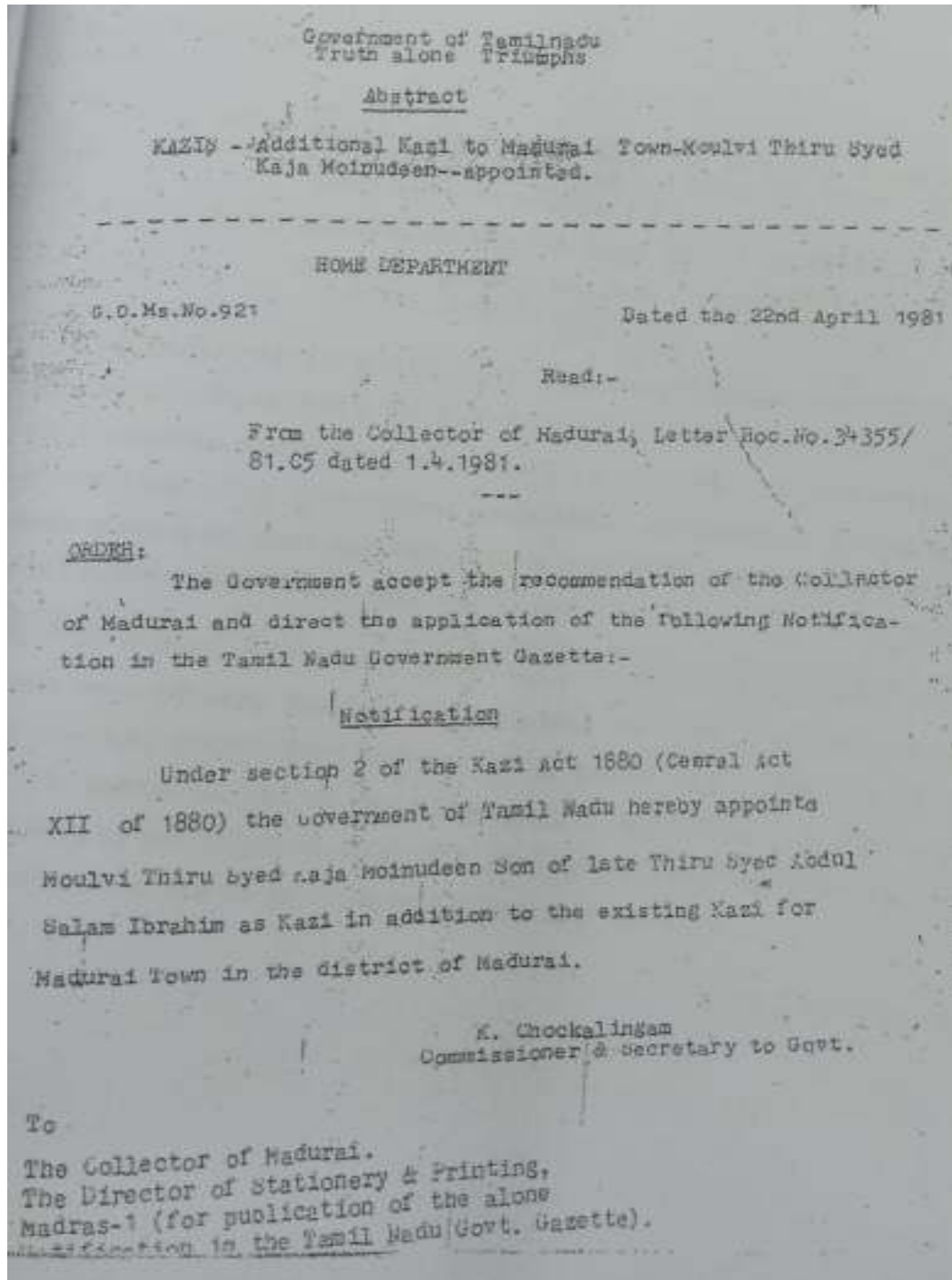


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impugned government order no where states that the petitioner has been

removed as Kazi. The petitioner's appointment is traceable to G.O.(Ms)No.921

dated 22.04.1981. The said notification reads as follows:-





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11.The 1981 notification does not limit the petitioner's tenure. In fact, Section 2 of Kazi's Act, 1880 empowers the Government to appoint a person as Kazi for life. If the appointment order specifies the tenure, the appointee has to vacate the office at the end of the said period. If tenure is not specified, the appointee can be removed only if the circumstances set out in Section 2 of the Act are attracted. In any event, removal has to be preceded by show cause notice and enquiry. In this case, no such event has occurred. Therefore, while the appointment of the third respondent by the first respondent cannot be questioned, the government order cannot be understood as having displaced the petitioner herein.

12.With this clarification, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 26.03.2024.



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G.R.SWAMINATHAN, J.

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To:-

- 1.The Government of Tamil Nadu,
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Backward Classes / Most Backward Classes
and Minorities Welfare Department,
Fort St.George, Chennai.
- 2.The District Collector,
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