

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
TUESDAY, THE TWENTIETH DAY OF JUNE TWO THOUSAND AND
TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR
AND
THE HONOURABLE SRI JUSTICE PULLA KARTHIK

IA No. 1 OF 2023
IN
WA NO: 624 OF 2023

Between:

1. Qazi Umair Mohammed Qamaruddin Hussain, Son of Qazi Mohammed Yousufuddin Hussain,
2. Qazi Uzair Mohammed Islahuddin Hussain, Son of Qazi Mohammed Yousufuddin Hussain,

...Petitioners
(Petitioners in WA 624 OF 2023
on the file of High Court)

AND

1. The State of Telangana, Represented by its Principal Secretary, Minority Welfare Department, Secretariat, Hyderabad.
2. Telangana State Waqf Board, Rep. by its Chief Executive Officer, Office at Razak Manzil, Haj House, Nampally, Hyderabad, Telangana State.

...Respondents
(Respondents in-do-)

Counsel for the Petitioners

:SRI P VENUGOPAL, SENIOR COUNSEL
FOR SRI MIR LUKMAN ALI

Counsel for the Respondent 1

:GP FOR MINORITY WELFARE

Counsel for the Respondent 2

:SRI ABU AKRAM (S.C.)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Order made in W.P. No. 6083 of 2023 dated 25.04.2023 by directing the Respondent No.2 to consider the Representation dated 25.02.2023 made by the Petitioners and to issue Marriage Booklets (Siyahjaths) including English version Marriage Certificates and Khula Certificates to the petitioners for the Qazzath Sarkar Qile Mohammed Nagar Bara Mahal Golconda, Hyderabad, till finalizing the Muntakhab proceedings pending before the Revenue Divisional Officer (Atiyat Court), Hyderabad, pending disposal of the WA No. 624 of 2023, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

Heard Sri P. Venugopal, learned Senior Counsel appearing for Sri Mir Lukman Ali, learned counsel for petitioners, learned Government Pleader for Minority Welfare appearing for 1st respondent and Sri Abu Akram, learned Standing Counsel for 2nd respondent, and perused the record.

Petitioners/appellants claim to be the sons of Kazi Mohammed Yousufuddin Hussain, who was claimed to be functioning as Kazi; that their father deceased on 17.02.2023; that the petitioners/appellants have approached the concerned Atiyat Court by making necessary application under Section 3-A of the Telangana Area Atiyat Enquiries Act, 1952 (for short 'the Act') on 22-02-2023, for issuing Muntakhab in their favour; that the said application filed by them is pending consideration by the concerned authority; and that pending consideration of their application, they have been discharging the functions of Kazi in the local area which hitherto was served by their deceased father.

The petitioners/appellants would further contend that they were appointed as Sadar Naib Kazi and Naib Kazi under their deceased father in terms of Section 2 of the Kazis Act, 1880 and their father was not either removed or suspended to function as a Kazi whereby the Naib Kazis appointed by a Kazi would also stand disqualified to discharge the functions.

The petitioners/appellants contend that inspite of them being appointed as Sadar Kazi Naib Kazi or Naib Kazi, the 2nd respondent is not issuing them with Siyahjaths and Khulla certificates to enable them to perform/discharge the function of Naib Kazi by conducting marriages and other rituals. It is further contended that the learned Single Judge had only proceeded on the premise of the claim of the petitioners/appellants as Kazis without taking note of they functioning as Sadar Naib Kazi and Naib Kazi which would also entitle them to get the Siyahjaths and Khulla certificates on account of death of the Kazi.

Admittedly the petitioners/appellants have approached the Atiyat Court by filing application under Section 3-A of the Act for issuing Muntakhab and the said application is pending consideration. The mere filing of application and its pendency would not by itself confer any right on the petitioners/appellants to claim themselves as a Kazi in the place of their deceased father and it is only upon issuance of Muntakhab, right if any to the petitioners/appellants would accrue. Till such time, the claim of the petitioners to consider them as Kazi cannot be accepted.

However, it is to be noted that the appointment of the petitioners/appellants as Sadar Naib Kazi and Naib Kazi during the life time of Kazi Mohammed Yousufuddin Hussain, who was discharging the functions of Kazi, is not in dispute either on account of lack of authority for making such appointment or that the said Kazi attracting disqualification of being removed/being placed under suspension under the Act. However, the order of the learned Single Judge did not consider this aspect of the matter that on

account of the death of a Kazi, the functioning of Sadar Naib Kazi and Naib Kazi would not get affected.

In view of the above and having regard to the fact that in similar circumstances, this Court (TVKJ) passed interlocutory order in I.A. No.1 of 2022 in W.P. No.30295 of 2022, *vide* order dated 27.07.2022, wherein a *prima facie* view was taken that due to the death of Kazi, a Naib Kazi appointed by the said Kazi during his life time, does not cease to function as Naib Kazi, thereby affecting the performance of their duties in the area assigned to them. This Court was also of a *prima facie* view that the services of Naib Kazi is co-terminus with the services of Kazi only in two contingencies viz., either removal or suspension of the Kazi and not otherwise.

As noted above, since it is not in dispute that the petitioners/appellants did not attract the disqualification to function as a Sadar Naib Kazi and Naib Kazi, even though their claim to be declared as Kazis pending enquiry, the 2nd respondent cannot refuse to issue them Siyahjaths and Khulla certificates.

In view of the above, there shall be interim direction as prayed for.

SD/- A.V.S. PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The Principal Secretary, Minority Welfare Department, State of Telangana Secretariat, Hyderabad.
2. The Chief Executive Officer, Telangana State Waqf Board, Office at Razak Manzil, Haj House, Nampally, Hyderabad, Telangana State.(1 & 2 By RPAD)
3. One CC to SRI. MIR LUKMAN ALI Advocate [OPUC]
4. Two CCs to GP FOR MINORITY WELFARE, High Court at Hyderabad.
[OUT]
5. Two spare copies

HIGH COURT

TVKJ & PKJ

DATED:20/06/2023



ORDER

**IA.NO.1 OF 2023
IN
WA.No.624 of 2023**

INTERIM DIRECTION