

(2014) 07 AP CK 0049

Andhra Pradesh High Court

Case No: Writ Appeal No.1520 of 2005

Ahmed Muqayyer Shah Khan

APPELLANT

Vs

The Government of A.P.

RESPONDENT

Date of Decision: July 10, 2014

Citation: (2014) 6 ALD 364 : (2014) 5 ALT 424

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: Abhinand Kumar Shavili, Advocate for the Appellant; B. Rama Krishna, Advocate for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

The appellant was appointed as a Kazi by the 1st respondent through orders in G.O.Ms.No.27, dated 14.03.2000, for the area known as Sarkar-e-Elgandal of Karimnagar. The said G.O. was challenged by one Kazi Anees Ahmed, by filing W.P.No.5419 of 2000. The writ petition was dismissed by a learned Single Judge of this Court, on 29.01.2002. Thereafter, on a complaint submitted by the 2nd respondent, the 1st respondent called for a report from the District Collector, Karimnagar. It is stated that the District Collector submitted report, observing that the allegations made against the appellant are not proved. Not satisfied with that, the 1st respondent called for a fresh report from the Chief Executive Officer (CEO) of the A.P. Wakf Board.

2. Through his report, dated 27.02.2002, the CEO is said to have observed that the allegations made against the appellant are proved. Taking the same into account, the 1st respondent issued a show cause notice to the appellant to explain as to why his appointment be not cancelled. The appellant submitted his explanation, on 08.10.2002. The 1st respondent issued G.O.Ms.No.32, dated 11.10.2002, removing him from the office of Kazi.

3. Challenging the said G.O., the appellant filed W.P.No.20698 of 2002. It was pleaded that the G.O. was issued contrary to the provisions of the Kazis Act, 1880 (for short the Act), and that the procedure adopted by the 1st respondent is improper. The 1st respondent filed a counter-affidavit opposing the writ petition. The learned Single Judge dismissed the writ petition through order, dated 25.07.2005. Hence, this writ appeal.

4. Heard Sri Abhinand Kumar Shavili, learned counsel for the appellant, and learned Government Pleader for Social Welfare, for respondent No.1, and Sri B.Rama Krishna, learned counsel for respondent No.2.

5. The appointment of Kazis is governed by the provisions of the Act. It is by following the procedure prescribed therein that the 1st respondent appointed the appellant as Kazi through orders in G.O.Ms.No.27, dated 14.03.2000. It is important to note that soon after the appointment of the appellant, W.P.No.5419 of 2000 was filed alleging that the appointment was not proper. Certain other allegations were also made. A learned Single Judge of this Court dismissed the writ petition, through order, dated 29.01.2002.

6. The 2nd respondent herein submitted a complaint, dated 08.08.2001 to the concerned Minister making certain allegations against the appellant. The allegations were mostly in relation to the so-called representation said to have been made by the appellant that he has been appointed as a Deputy Kazi.

7. The 1st respondent called for a report from the District Collector, Karimnagar. Through his report, dated 02.11.2001, the District Collector, expressed the view that the allegations made against the appellant are baseless and the complaint submitted by the 2nd respondent is devoid of merits. The matter ought to have ended there. However, the 1st respondent called for a report from the CEO of the A.P. Wakf Board. Based on the report said to have been submitted on 27.02.2002, by the CEO, the 1st respondent issued G.O.Ms.No.32, dated 11.10.2002.

8. The Act does not prescribe any detailed procedure for removal of the Kazi appointed under it. However, going by the principles contained in the General Clauses Act, it has to be assumed that the appointing authority has always the power to remove the person appointed. In the absence of any detailed procedure, the basic principles must be followed.

9. To the extent the 1st respondent called for a report from the District Collector, on a complaint submitted by the 2nd respondent, there cannot be any serious objection, particularly when there is no prescribed procedure. Once the District Collector caused a detailed enquiry and submitted the report, expressing the view that the allegations made against the appellant are baseless, the matter must stop at that. Even when the law provided for conducting enquiries, the appointing authority cannot order series of enquiries till he gets a report to his satisfaction.

10. The 1st respondent did not mention any provision on the basis of which he called for a report from the CEO of the Wakf Board. It is not out of place to mention that the Wakf Board is a creature under a different enactment and has no role to play in the appointment or removal of Kazis. There was absolutely no justification for the 1st respondent to create a role for the CEO of the Wakf Board, in this behalf. Further, the record does not disclose that the CEO has given an opportunity to the appellant in the course of enquiry conducted by him. The complaint of the appellant that the report of the CEO was not furnished to him, remains unrebutted.

11. All said and done, the allegation against the appellant was about the representation said to have been made by him that he was appointed as a Kazi, that too, in an enquiry by the police. The record discloses that the father of the appellant was appointed as Kazi and he was assisting him. May be in the course of conversation with someone, he may have informed that he is the son of a Kazi and that he is assisting his father. If somebody gained impression that the appellant himself was functioning as Deputy Kazi, he cannot help it. At any rate, the Act empowers the 1st respondent to remove a Kazi only on finding that his functioning subsequent to the appointment, is not satisfactory, or that he is not discharging the duties in accordance with the relevant provisions of law. The conduct of a person appointed as Kazi prior to the date of appointment hardly can become the subject-matter of an enquiry.

12. Viewed from any angle, we do not find any basis for the 1st respondent in passing the impugned order. Hence, the writ appeal is allowed and the order under appeal is set aside. We allow the writ petition and the order impugned therein is set aside. There shall be no order as to costs.

13. The miscellaneous petition filed in this writ appeal shall also stand disposed of.