

(1978) 08 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petn No. 1178 of 1877

Khazi Mohd. Abbas Ali

APPELLANT

Vs

Andhara Pradesh Wakf Board and Others

RESPONDENT

Date of Decision : 28-08-1978

Acts Referred:

Kazis Act, 1880 — Section 2

Citation : AIR 1979 AP 116

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : Upendralal Waghray, for the Appellant; L.P.R. Vittal and K.F. Baba, for the Respondent

Judgement

1. This is " application for the issue of a writ in the nature of a writ of certiorari, to call for the records relating to the proceedings F. No. 138/74 Nazirul Quazaath/188 dated 23-4-1977 of the Andhra Pradesh Wakf Board, and to quash the same.

2. The relevant facts are as follows: The dispute in this writ petition relates to the appointment of Khazi to the areas of Nalgonda and Devarakonda. Originally one Khazi Gulam Mohiuddin, was the Khazi. He died in 1910 A. D. He had a son Mohammed Obedullah, who pre-deceased him, leaving behind two sons Mohammed Abdul Wahab, the father of the 3rd respondent and Mohammed Abbas Ali, the petitioner herein. Certain grants including Jagirs were endowed for the performance of services of Khazi of Nalgonda and Devarkonda. In 1352 fasli, the succession was granted in favour of Khazi Gulam Mohiuddin, son of Khazi Mohammed Abdul Wahab, with Shikmi rights of the petitioner Md. Abbas Ali, and the other heirs of Mohammed Abdul Wahab. Gulam Mohiuddin, and his sister Ismatunnisa Begum, migrated to Pakistan sometime after the police action. The other sister of Gulam Mohiuddin, Faridunnisa Begum, the 3rd respondent claimed the office of Kazaat by hereditary right along with the mash and cash grant attached thereto, the petitioner remaining as a shikmidar. One Shaik Ahmed was

appointed as Naib Khazi for discharging the duties of Khazi. On the death of Shaik Ahmed on 5-3-1966, the question of making arrangements for the performance of the office of Kazaat of Nalgonda and Devarkonda, arose. The petitioner applied to the Andhra Pradesh Wakf Board for appointment in the place of late Shaik Ahmed. The Wakf Board rejected the application of the petitioner on 28-5-1968 but he continued to be the care-taker as Naib Khazi under the orders dated 14-7-1966 of the Wakf Board. Subsequently, the question of appointing a Khazi on a permanent footing arose. The Secretary of the Wakf Board, by the impugned order, recognised the right of the 3rd respondent to the office of Kazaat as she is the only legal heir and sole successor to late Khazi Abdul Wahab, the Khazi of Nalgonda and Devarkonda. The 3rd respondent being a woman she is directed to make arrangement for a Naib on her behalf for the actual performance of the office of Sadar Quazath, Nalgonda and Devarkonda, if she does not want to continue the petitioner as her Naib, and that on appointment of another person as Naib, the petitioner would automatically cease to hold the office of Quazath. In this writ petition, the petitioner challenges the impugned order, recognising the right of the 3rd respondent to the office of Kazat.

3. Sri Upendralal Waghray, learned counsel for the petitioner contends that the office of Khazi is purely a secular one, unconnected with any religious duties, and therefore the Wakf Board has no jurisdiction to appoint a Khazi.

4. On the other hand, it is contended by Sri K. F. Baba, learned counsel for the 3rd respondent that the office of the Kazi is a religious one, that for rendering the services of Kazi, properties were endowed and they constitute Wakf and therefore the Wakf Board has power to appoint a Kazi.

5. The first question for consideration is whether a Kazi, performs the religious duties a not Both the counsel have invited my attention to the passage from Text Books on Mohammadan Law and to several rulings of various High Courts.

6, In Wilson's Glossary, Kazi is mentioned as "A Mohammadan Judge, an officer formerly appointed by the Government to administer both civil and criminal law, chiefly in towns, according to the principles of the Koran: under the British authorities the judicial functions of the Kazis in that capacity ceased, and with the exception of their employment as the legal advisers of the Courts in cases of Mohammadan law, the duties of those stationed in the cities or districts were confined to the preparation and attestation of deeds of conveyance and other legal instruments, and the general superintendence and legalization of the ceremonies of marriage, funerals, and other domestic occurrences among the "Mohammadans".

7, In the Hedaya, Commentary on the Mussulaman Laws by Charles Hamilton, Book No. XX at page 334, it is stated that it is the duty of the Sovereign to appoint fit persons to the office of Kazee, that he must decide the claims relating to property and that he must attend funerals and visit the sick.

8. In Tayyabji's Muslim Law (Fourth Edition, it is mentioned at page 39, as

follows:--

"Much confusion is frequently caused by failure to distinguish the person referred to in the Texts as Cadi (viz., the judge appointed by the State) from the person designated Cadi in our times in India and Pakistan viz., an officiant at the performance of marriage and similar ceremonies."

9. In Mulla's Principles of Mohammedan Law (17th Edition) it is stated by the learned author at page 226, paragraph 221, as follows:-

"Kazi:- the Mohammedan Law does not regard the office of Kazi as hereditary, and claim to such a right though supported by custom, is not one that can be recognised by a Civil Court."

10. The learned author also observed that "A Kazi may be appointed by the Government or by some internal arrangement among the Mohammadans of each locality."

11. These Texts do not give us any clear idea as to whether a Kazi performs religious duties or not.

12. In *Mahomed Ismail Ariff v. Ahmed Moolla Dawood* 43 I A 127 at p. 134 : (AIR 1918 PC 132 at p. 135), their Lordships of the Privy Council, observed as follows:--

"Generally speaking, in case of a Wakf or trust created for specific individuals or a determinate body of individuals, the kazi, whose place in the British Indian system is taken by the Civil Court, has in carrying the trust into execution to give effect so far as possible to the expressed wishes of the founder. With respect, however, to public religious or charitable trusts, of which a public mosque is a common and well known example, the kazi's discretion is very wide. He may not depart from the intentions of the founder or from any rule fixed by him as to the objects of the benefaction; but as regards management which must be governed by circumstances he has complete discretion. He may defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but his primary duty is to consider the interests of the general body of the public for whose benefit the trust is created. He may in his judicial discretion vary any rule of management which he may find either not practicable or not in the best interests of the institution."

13. These observations do indicate that Kazi not only was previously exercising the powers of a Civil Court but also managing public religious or charitable trusts. But this case does not deal with the question as to the authority or body who should appoint a Kazi.

14. *Phatmabi Vs. Haji Abdulla Musa Sait*, only dealt with the question whether the office of a kazi was hereditary or not. But the question as to who should appoint a kazi, did not arise for consideration there.

15. In *Kasamkhan Ahmedkhan Mujawar Vs. Kaji Abdulla Kaji Mahamad*, it was

observed at P. 154 by Fawcett, J., as follows:--

"There is undoubtedly evidence to justify the finding that until the dispute about the Darga, the Kazi Community at pawas in variably Officiated at religious rites of the Mohammadan community at this village

16. In Sattappa Gurusattappa Hukeri Vs. Mahomedsaheb Appalal Kazi, Tyabji J., sitting single, observed at pages 233 and 234 as follows:--

"The word qazi is etymologically derived from the root word for decreeing, ordaining or judging, and qazi signifies one who gives decisions. It is the technical designation for a judge (Civil as well as criminal the texts. In addition, however, to his strictly judicial functions the qazi used (by amenity) to perform other functions such as officiating at marriages, superintending talaks, (occasionally keeping marriage records) and perhaps leading ceremonial prayers. These latter are the only functions now discharged by qazis in British India. Though Islam does not as a rule recognise an ordained priesthood or clergy or require their ministration the efficacy of any religious ceremony, and though the services of the qazi cannot of course be forced on anyone, ILR (1878) 8 Bom, 232 (Raja Valad Shivapa v. Krishnabhat) yet by most persons the presence of some religious officiant is considered desirable (or in a vague sense obligatory) and there is hardly any normal marriage at which the qazi or a religious dignitary is not present. It is thus obvious that the qazi's office entails in India the rendering of services to the community. This fact must not induce a closing of the eyes to the fact that when the ancient texts speak of a qazi they refer to a judicial office having entirely different functions from those of the religious officiant now spoken of as a qazi, and the applicability of the original texts to the question whether the office now known in India as that of a qazi should be hereditary may not be incontrovertible."

17, This Judgment was carried in appeal. But the judgment in the appeal does

not specifically deal with the question as to whether the kazi performs religious duties or not. From the observations of Fawcett, in Kasamkhan v. Kaji Abdulla (supra), (AIR 1920 Bom 153) and Tyabji, J. in Sattappa Gurusattappa Hukeri Vs. Mahomedsaheb Appalal Kazi, and of the privy Council in Md. Ismail Ariff v. Ahmed Moola Dawood (43 IA 127) : (AIR 1916 PC 132) it appears to me that a Kazi does perform some duties of a religious nature like performing marriages and leading prayers in Mosques.

18. That a kazi performs duties of a religious nature is also mentioned in the Statement of Objects and Reasons of Kazis Act, 1880 (Act XII of 1880), which reads as follows:-

Under the Mohammadan Law the Kazi was chiefly a Judicial Officer. His principal powers and duties are stated at some length in the Hedaya, Book XX. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate. In addition, however, to his functions under the Mohammadan Law,

the Kazi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principle of these seems to have been preparing, attesting and registering deeds of transfer of property, celebrating marriages, and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the kazi as such. It is probable that the customary performance of them by him arose rather from his being a public functionary and one known by his official position to be acquainted with the law, than from his having as Kazi, a greater claim to perform them than anyone else. Such was the position of the Kazi in this country under Native Government. On the "introduction of the British rule, Judges and Magistrates took the place of Kazis and the Kazi in his judicial capacity disappeared: but the British Government, though no longer recognizing the judicial functions of the Kazi, did not abolish the office. By certain Regulations passed from time to time, the appointment of Kazi-ul-kuzaat and Kazis by the State was provided for, and the performance of their non-judicial duties was recognized by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kazi under these Regulations comprised some or all of the following viz.:-

- (1) preparing and attesting deeds of transfer and other law-papers;
- (2) celebrating marriages and presiding at divorces;
- (3) performing various rites and ceremonies;
- (4) superintending the sale of distrained property and paying charitable and other pensions and allowances.

In the course of subsequent legislation, the first and last of the above duties devolved on officers specially appointed for the purpose, and there remained nothing to be performed by the Kazi but the second and third, which were purely ceremonial. Under these circumstances it appeared no longer necessary that the Government should appoint these officer. Accordingly, in 1864, Act XI of that year, all the Regulations relating to the appointment of Kazis by Government and the duties to be discharged by them were repealed, but in order that it might be clear that no interference with the ceremonial functions of these officers was intended, a section was added to that Act as follows:-"

"Nothing contained in this Act shall be construed so as to prevent a Kazi-ul-Kuzaat or other Kazi from performing, when required to do so, any duties or ceremonies prescribed by the Mohammadan law (see Section 2 of Act XI of 1864).

Certain of his duties having thus survived the passing of Act XI of 1864, the Kazi is still a functionary of considerable importance in the Mohammadan community. What was originally in some sense an accidental adjunct of his judicial office has become his principal and only duty, and in some parts of the country at least, the presence of a kazi at certain rites and ceremonies appears now to be considered

by Mohammadans essential from their point of view."

In the preamble to the Kazis Act , it is stated as follows:-

"Whereas by the preamble to Act No. XI of 1864 (an Act to repeal the law relating to the offices of Hindu and Mohammadan Law officers and to the offices of Kazi-ul-kuzaat and of Kazi, and to abolish the former offices) it was (among other things) declared that it was expedient that the appointment of the kazi-ul-kuzaat, or of City, Town or Pargana Kazis should be made by the Government, and by the same Act the enactment's relating to the appointment by Government of the same officers were repealed; and whereas by the usage of the Mohammadan community in some parts of (India) the presence of Kazis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kazi;"

19. The aforesaid extracts from the Statement of Objects and Reasons and the preamble to the Kazis Act, clearly show that a kazi holds a position of considerable importance in Mohammedan community and that his presence at the celebration of marriages and at the performance of certain other rites and ceremonies, is considered essential by Muhammadans. Therefore the contention of Sri K. F. Baba, that a kazi performs not only secular duties but also certain religious duties, has to be upheld.

20. But the question for consideration is as to who is the authority competent to appoint a Kazi. Under S. 2 of the Kazis Act, 1880, it is the State Government that has to appoint a kazi after consulting the principal Muhammadan resident of such local areas. In the instant case, the State Government has not exercised the power to appoint a Kazi.

21. Sri Upendralal Waghray, learned counsel for the petitioner contends that the Wakf Board has no power to appoint a kazi. But it is contended by Sri K. F. Baba, learned counsel for the 3rd respondent, that the Wakf Board merely recognized the 3rd respondent as Kazi, that the petitioner himself was appointed as a Naib Kazi by the Wakf Board and therefore he cannot continue as a Naib Kazi when the Wakf Board has recognized the rights of the 3rd respondent as kazi and empowered her to appoint another Naib Kazi if she so desired.

22. I think, there is considerable force in the contention of Sri K. F. Baba. The order dated 15-5-1966 of the Secretary, Wakf, Board shows that the petitioner was appointed to perform the duties of Khazaat of Nalgonda and Devarkonda as In-charge Khazi until further orders. The letter dated 4-6-1966 from the Wakf Board addressed to the petitioner also shows that the petitioner was only accorded sanction to perform the duties of Khazaat of Nalgonda and Devarkonda as In-charge Kazi. To the same effect is the letter dated 14-7-1966 issued by the Secretary, Andhra Pradesh Wakf Board to the petitioner. From these letters, it is clear that the petitioner was appointed only as a kazi in-charge by the Wakf

Board itself but he did not acquire any right under the aforesaid orders to hold the pose of kazi. By the impugned order dated 23-4-1977, the Wakf Board recognized the right of the 3rd respondent to be the Kazi, she being the only legal heir and sole successor to late Kazi Abdul Wahab, Sadar Kazi of Nalgonda and Devarkonda, and terminated the appointment of the petitioner as Naib Kazi, to which post he was appointed earlier by the Wakf Board until further orders. The petitioner, having been appointed as Naib Kazi until further orders by the Wakf Board, cannot claim to continue in the said post as of right and challenge the impugned order of the Board.

23. It is contended by Sri Upendralal Waghay, that the 3rd respondent being a woman, cannot discharge the duties of a Kazi.

24. In the present case, I do not propose to go into the question as to who is entitled to be appointed as permanent Kazi or as to which is the competent authority which should make the appointment. The petitioner and the 3rd respondent are setting up rival claims to the office of kazi, and this is a matter which cannot properly be decided in a writ petition. So far as the petitioner's appointment as Naib Kazi is concerned, it is purely a temporary one and he can hold the office of Naib Kazi until further order are passed by the Wakf Board, and hence it is not open to him to challenge the impugned order and continue in office as Naib Kazi. In this view, I do not think, I can interfere with the impugned order under Art. 226 of the Constitution. The Writ petition is therefore dismissed but in the circumstances without costs. Advocate's fee RS. 100/-.

25. Petition dismissed.