

HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 33130 OF 2023

ORDER :

Challenging the action of the respondents in not permitting the women members of Akbhari Sect of Shia Muslims for conducting Majlis, Jashans and other religious prayers in Ibadat Khana situated in premises bearing Nos. 22-2-636, 637, 638, 639, 640, 641, 642, 643, 644, 645 to 650, 22-2-664, 22-2-666 and 22-2-667, Darulshifa, Hyderabad, petitioner Society is before this Court.

2. The prime case of petitioner is that in the subject Ibadat Khana, even Shia Muslim women are entitled to perform Majlis, Jashans and other religious prayers which is a fundamental right guaranteed to them under the Constitution of India. Petitioner draws attention of this Court to the proceedings bearing F.No. Gen/DM/Z-1/06, dated 15.06.2007 issued by the Waqf Board enabling Shia Muslim women to conduct Majlis in the Ibadat Khana.

It is the grievance of petitioner that the 3rd respondent, which is a self-styled Committee, though issued a proceeding which is subject matter of Writ Petition No. 16996 of 2023, was also sensitized that Akbari Sect of Shia community

were not being allowed to perform Jashans, Majlis and other religious prayers in tune with Wakfnama, on the contrary, the very same 3rd respondent is permitting Shia Muslim women of Usooli Sect for performing activities which are not mentioned in the Wakfnama.

Petitioner Society is stated to have submitted several representations dated 14.10.2023, 16.10.2023 and 18.10.2023 to the Telangana State Waqf Board to permit Shia Muslim women to conduct Majlis, Jeshans and other religious prayers, but so far, no action has been taken by them. They approached even the police, who became mute spectators. Having no other alternative, petitioner approached this Court.

3. Initially, on 11.12.2023, when the matter was heard, Sri P. Venugopal, learned Senior Counsel argued that Articles 14 and 25(1) of the Constitution guarantee all the citizens the right to equality and freedom of conscience, freedom to profess, practice and propagate religion. He contends that the action of the respondents in denying access to the women of Akhbari Sect to perform Majlis, Jashans and other religious prayers in the Ibadat Khana is contrary to the proceedings dated 15.06.2007 of the Waqf Board and it amounts to discrimination and violation of fundamental rights.

4. Sri Abu Akram, learned Standing Counsel for Waqf Board vehemently opposed the Writ Petition. On a query from the Court, the learned counsel failed to point out from the Holy Book which part denied entry to women of a particular sect into prayer halls. However, it is the sentiment, convention and the decision of the religious elders which have to be followed and respected by the individuals / societies who practice Islam and they cannot claim / agitate as a matter of right, emphasized the learned counsel.

5. Taking into consideration the submissions made by both the learned counsel, this Court observed that the issue is no more *res integra* in view of the judgment of the Larger Bench of the Hon'ble Supreme Court in ***Indian Young Lawyers Associatoin and others (Sabarimala Temple, In Re) v. State of Kerala***¹. Further, this Court observed that nowhere, in the Holy Book, the Almighty prohibited women from entering into prayer halls to offer their prayers. Chapter 2 Albakarah 222-223 makes it evident that except during a particular period which was given as 'rest period' for women by the Nature itself, there is no bar against women to offer prayers. This Court therefore,

¹ (2019) 11 Supreme Court Cases 1

relying on the proceedings dated 15.06.2007, opined that when the Waqf Board permitted Shia Muslim women to enter into prayer halls, it is not known why they have been prohibiting Akhbari Sect of the same community to enter into Ibadat Khan. This itself manifests clear discrimination on the part of the respondents. The Hon'ble Supreme Court in the judgment referred to supra, in clear and categorical terms, held that the Constitution by way of Article 25(1) confers on every individual in society without distinction of any kind whatsoever, freedom of conscience, freedom to profess, practice and propagate religion. This Court therefore, was of the opinion that action of the respondents amounts to violation of fundamental rights guaranteed to petitioner under Articles 14 and 25(1) of the Constitution and thus, directed the respondents to forthwith permit the women members of Akhbari Sect of Shia Muslim for conducting Majlis, Jashans and other religious prayers in the Ibadat Khana situated in the subject premises.

6. Seeking to vacate the said order, the 3rd respondent filed an Application, along with a counter-affidavit stating that the members of the community have already availed the remedy under Section 83 of the Act by filing O.S.No. 83 of 2021 before the Tribunal and again approached this Court for the self same

relief, hence the Writ Petition is not maintainable. Further, petitioner is not 'interested person' under Section 3(k) of the Act. It is stated that against the interim order passed in the above suit, petitioner filed C.R.P.No. 19 of 2022 and the respondents filed C.R.P.No. 356 of 2022. The Revision filed by the petitioner was dismissed and the other Revision was allowed by order dated 20.07.2022, against which petitioner preferred SLP which was dismissed on 06.01.2023. This respondent contends that as the matter is *sub judice* before the Tribunal, this Writ Petition is not maintainable to decide the disputed questions of fact. It is also stated that in view of the interim order, the members of petitioner Society are creating nuisance in the vicinity of Ibadath Khana disturbing the prayers offering by other members which is nothing but degrading the sanctity of waqf instituiotn.

7. The 2nd respondent - Waqf Board filed the counter-affidavit stating that Ibadath khana Hussaini absolutely belongs to Shia community which has two sects ie. Vusooli and Akhbari. Sofaras Vusooli sect is concerned, they have to offer their prayers, Namaz, lecture and Madrasa, whereas Akhbari sect to perform the prayers, Majalis and Jashans. As stated supra Ibadathkhana Hussaini is meant for both the sects including

shia women. It is stated that this Respondent has strictly instructed the then Secretary Sri Syed Waheeduddin Hyderi Jaffery, Shia Imamiathna on 15.06.2007 who allowed and permitted to perform Majalis-e-Shahadath of Shahzadi Fatima in Ibadathkhana Hussaini, Darusshifa, Hyderabad by the women members of Shia community. Therefore not only the Waqf Board but also the Mutawalli Committee have been discharging their respective duties allowing women members of Shia community to perform prayers as stated above by both the sects. It is stated that he has been in constant touch not only with committee members but also with the Mutawalli committee of waqf institution and time and again, advising them to extend necessary assistance and to allow Shia women to offer prayers according to wakfnama.

8. In the reply, petitioner stated that the Constitutional courts have held that what all has been stated in the Wakf has to be honoured in its letter and spirit. In fact, on 06.01.2024, a combined function was held in Ibadat Khana and the 3rd respondent was one of the chief guests therein. The men and women belonging to Usooli sect were seen mingled together in the said men's hall, sitting next to each other and on the contrary, Muslim women belonging to Shia Akhbari Sect are

prohibited to conduct women Majlis, Jashan and other prayers in the same area of IbadathKhana. According to petitioner, so far as God is concerned, men and women are the same; women can go to Ibadat Khana and offer prayers like men. There is no prohibition either by any custom, usage or even practice. The 3rd respondent is unnecessarily raising issues as if he is the Prince of Ibadat Khana. Petitioner also filed a detailed reply to the counter-affidavit filed by the Waqf Board, but in view of the order to be passed, this Court feels it not necessary to discuss all those details.

9. Heard Sri P. Venugopal, learned Senior Counsel on behalf of petitioners, Sri Abu Akram, learned Standing Counsel for the Waqf Board and Ms. N. Sameena, learned counsel for the 3rd respondent finally.

10. This Court considered the matter in detail and by order dated 11.12.2023, directed the respondents to forthwith permit the women members of Akbhari Sect of Shia Muslim for conducting Majlis, Jashans and other religious prayers in the Ibadat Khana situated in the subject premises. Though learned counsel for the 3rd respondent raised the contention that the matter is pending before the Tribunal, this Court is not inclined to accept the same, for, under Article 226 of the Constitution of

India, it is well-established, this Court, though alternative remedy is available, can come to the rescue of a party, who complains violation of his / her fundamental rights. In this case, admittedly, Akhbari sect of Shia Muslim are not allowed to perform Majlis, Jashans and other religious prayers, whereas Vusooli Sect of the same community are allowed which, according to this Court, is a clear discrimination. Further, this Court on earlier occasions, directed the respondents therein to permit Akhbhari Sect also to perform religious activities in the Ibadat Khana. The Waqf Board also categorically stated that Ibadathkhana Hussaini absolutely belongs to Shia community and the said Ibadathkhana is meant for both Akbhari and Vusooli Sects including Shia women and they have strictly instructed the then Secretary Sri Syed Waheeduddin Hyderi Jaffery, Shia Imamia Ithna on 15.06.2007 to permit women members of Shia community to perform Majalis-e-Shahadath of Shahzadi Farima in Ibadathkhana Hussaini Darusshifa, Hyderabad.

11. In the light of the above, the Writ Petition is allowed in terms of the interim order dated 11.12.2023. No costs.

12 Consequently, the miscellaneous Petitions, if any shall stand closed.

NAGESH BHEEMAPAKA, J

25th July 2024

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