

WP No. 13539 of 2013

Bader Sayeed v. Union of India

2017 SCC OnLine Mad 74

In the High Court of Madras
(BEFORE M.M.S.J., C.J. AND M.M. SUNDRESH, J.)

Mrs. Bader Sayeed Advocate, W/o Dr. Zaheer Ahmed Sayeed, No.
4, Seshadri Road, Alwarpet, Chennai-18

v.

Union of India, rep. by its Secretary to Government Ministry of Law
& Justice, 4th Floor, A Wing, Sashtri Bhavan, New Delhi 110 001
and 15 Others.

WP No. 13539 of 2013; WP No. 17991 of 2013; and WP(MD) No. 15664 of 2013

Decided on January 10, 2017

1. The common issue raised in these petitions is assailing the declarations which are sought to be issued by 'Kazis' in India, particularly in Tamil Nadu, allegedly certifying a Talaq and to consequently forbear them from issuing certificates and other documents certifying or approving Talaq.

2. It is common cause that the office of the Kazi is as defined under The Kazis Act, 1880. Section 4 of the said Act reads as under:

"4. Nothing in Act to confer judicial or administrative powers; or to render the presence of Kazi necessary; or to prevent any one acting as Kazi. - Nothing herein contained, and no appointment made hereunder, shall be deemed -

(a) to confer any judicial or administrative powers on any Kazi or Naib Kazi appointed hereunder; or

(b) to render the presence of a Kazi or Naib Kazi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(c) to prevent any person discharging any of the functions of a Kazi. The aforesaid, thus, makes it clear that the office of the Kazi does not confer on the person any judicial or administrative power.

3. Learned counsels appearing for the All India Muslim Personal Law Board/9th respondent and Shariath Defence Forum/13th respondent seek to suggest that the nature of certificates issued by the Chief Kazi is only as an opinion having expertise of Shariat Law. In this behalf, our attention is drawn to the Muslim Personal Law (Shariat) Application Act, 1937, more specifically Section 2, which reads as under:

"2. Application of Personal Law to Muslims. - Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding interstate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubarat, maintenance, dower, guardianship, gifts trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in case where the parties are Muslims shall be the Muslim Personal Law (Shariat).

4. On the other hand, the petitioners and others supporting the petitioners including the Women Lawyers Association/7th respondent seek to contend that the nature of certificates issued are causing immense confusion in the matrimonial

proceedings and also in the understanding by both the spouses of what is the effect of such a certificate being issued by the Chief Kazi. In this behalf, some certificates have been filed with the petitions while others are produced before us to contend that the tenor remains the same from 1997 to 2015, i.e. it merely states that on a representation of the spouse of a particular date, the Talaq pronounced in respect of the wife is valid as per Islamic Shariat. As to what the facts were which persuaded the Chief Kazi to opine so have also not been set out nor does the certificate seeks to clarify that it is only in the nature of opinion.

5. Learned counsel appearing for the Board states that the Board/9th respondent is willing to examine the format in which a certificate may be issued purely as an opinion of the Chief Kazi having expertise on the Shariat Law, so that there is no ambiguity before any legal forum or otherwise understanding the effect of it, i.e. that it is a mere opinion. We, thus, give time to the Board to formulate the format of the certificate and place a draft of that certificate before us so that the inputs from other stakeholders are made available in case there are any suggestions.

6. In the meantime, to avoid any confusion, we issue the following directions:

- a) Pending consideration of the matter by the Muslim Personal Law Board, no certificate in respect of Talaq would be issued as an opinion by the Chief Kazi;
- b) It is clarified for purposes of Courts of legal proceedings that the certificate issued by the Chief Kazi is only an opinion and has no legal sanctity more specifically in view of Section 4 of The Kazis Act, 1880;
- c) The order be circulated by the Registrar of the Court to the judicial forums for clarity and it is open to the concerned petitioners to give adequate publicity to the same.

7. List for further proceedings on 21.02.2017.

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