

**(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION NO: 33130 OF 2023

Between:

Anjuman-e-Alavi, Shia Imamia Ithna Ashari Akhbari (Regd) Society, Represented by its Secretary, Smt. Asma Fatima, Daughter of Sri Mir Taqi Raza, Occupation. Student, Resident of H. No. 22-3-885, Darulshifa, Hyderabad, T.S.

Petitioner

AND

1. State of Telangana, Represented by its Principal Secretary, Minorities Welfare Department, Telangana Secretariat Buildings, Hyderabad.
2. Telangana State Waqf Board, Represented by its Chief Executive Officer, Hyderabad.
3. Muttawali Committee of Ibadath Khana Hussaini, H. Nos.22-2-638, 639, 640, 641, 642, 643, 644, 645 to 650, 664, 666, 667, 636 and 636, Darulshifa, Hyderabad-24, represented by its President Mr. Mir Hasnain Ali Khan, son of Mr. Mir Mehdi Ali Khan, Occupation. Business, Resident of Plot No.67, Huda Enclave, Nandagiri Hills, Jubilee Hills, Shaikpet, Hyderabad-33.

Respondents

WHEREAS the Petitioner above named through its Advocate Sri MIR LUKMAN ALI presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any appropriate Writ, Order or direction, preferably a Writ in the nature of Mandamus, declaring the action of the respondents in not permitting the women members of Akhbari Sect of Shia Muslims for conducting Majlis, Jashans and other religious prayers in the Ibadat Khana, situated in premises bearing No.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, as illegal, arbitrary and violative of Articles 14 and 25 of the Constitution of India and direct the respondents to forthwith permit the women members of Akhbari Sect of Shia Muslims for conducting Majlis, Jashans and other religious prayers in the Ibadat Khana, situated in premises bearing No. 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;

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri P.Venugopal, learned Senior Counsel representing Sri Mir Lukman Ali, Advocate for the Petitioner, GP for Social Welfare for the Respondent No.1 and Sri Abu Akram, learned Standing Counsel for Waqf Board representing Respondent No.2, directed issue of notice to the Respondents herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

1. The Principal Secretary, Minorities Welfare Department, State of Telangana, Telangana Secretariat Buildings, Hyderabad.
2. The Chief Executive Officer, Telangana State Waqf Board, Hyderabad.
3. Mr. Mir Hasnain Ali Khan, son of Mr. Mir Mehdi Ali Khan, President of Muttawali Committee of Ibadath Khana Hussaini, H. Nos.22-2-638,639,640,641,642,643, 644, 645 to 650, 664, 666, 667, 636 and 636, Darulshifa, Hyderabad-24, Resident of Plot No.67, Huda Enclave, Nandagiri Hills, Jubilee Hills, Shaikpet Hyderabad-33.

are directed to show cause on or before 03.01.2024 to which date the case stands posted as to why in the circumstances set out in the petition and the affidavit filed therewith (copy enclosed) this WRIT PETITION should not be admitted.

IA NO: 1 OF 2023

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 direct the respondents to forthwith permit the women members of Akhbari Sect of Shia Muslims for conducting Majlis, Jashans and other religious prayers in the Ibadat Khana, situated in premises bearing No. 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, pending disposal of WP No. 33130 of 2023, on the file of the High Court.

**The Court made the following
ORDER:**

Notice before admission.

Learned Government Pleader for Social Welfare accepts notice on behalf of the 1st respondent. Learned Standing Counsel for Waqf Board takes notice for the 2nd respondent.

Learned counsel for petitioner is permitted to take out personal notice to the 3rd respondent by Registered Post and file proof of service.

There shall be interim order as prayed for.

Challenging the action of the respondents in permitting the women members of Akhbari 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 Shia Muslim Women of 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. Learned Senior Counsel Sri P. Venugopal strenuously argues that Articles 14 and 25(1) of the Constitution of India 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, emphasizes the learned counsel.

5. Heard learned counsel on either side extensively on the subject and perused the material on record.

6. The issue is no more *res integra*. The Larger Bench of the Hon'ble Supreme Court in *Indian Young Lawyers Association and others (Sabarimala Temple, In Re) v. State of Kerala* ((2019) 11 Supreme Court Cases 1) in para 208, observed as under:

“In clause (1), Article 25 protects the equal entitlement of all persons to a freedom of conscience and to freely profess, protect and propagate religion. By conferring this right on all persons, the Constitution emphasises the universal nature of the right. By all persons, the Constitution means exactly what it says:

every individual in society without distinction of any kind whatsoever is entitled to the right. By speaking of an equal entitlement, the Constitution places every individual on an even platform. Having guaranteed equality before the law and the equal protection of laws in Article 14, the draftspersons specifically continued the theme of an equal entitlement as an intrinsic element of the freedom of conscience and of the right to profess, practise and propagate religion. There are three defining features of clause (1) of Article 25: first, the entitlement of all persons without exception, second, the recognition of an equal entitlement, and third, the recognition both of the freedom of conscience and the right freely to profess, practise and propagate religion. The right under Article 25(1) is evidently an individual right for, it is in the individual that a conscience inheres. Moreover, it is the individual who professes, practises and propagates religion. Freedom of religion in Article 25(1) is a right which the Constitution recognises as dwelling in each individual or natural person.”

7. Fortunately, I had an occasion to go through the Holy Quran (Telugu version). It is clear, nowhere, 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.

Further, a look at the definition of words ‘Jashan’ and ‘Majlis’ shows that:

“Urdu Word جشن Meaning in English is Celebration.

The other similar words are Jashan, Tareef and Shohrat.

The synonyms of Celebration include Anniversary, Bash, Birthday, Blast, Carousal, Ceremony, Conviviality, Festival, Festivity, Fete, Frolic, Gaiety, Gala, Glorification, Hilarity, Honoring, Hullabaloo, Jollification, Joviality, Jubilation, Jubilee, Keeping, Magnification, Merriment, Merrymaking, Observance, Party, Performance, Recognition, Remembrance, Revelry, Saturnalia, Solemnization, Spree, Triumph, Hoopla, Wingding and Memorialization”.

“*Majlis*” (Arabic: المجلس pl. مجالس Majalis) is an Arabic term meaning "sitting room", used to describe various types of special gatherings among common interest groups of administrative, social or religious nature in countries with linguistic or cultural connections to Islamic countries. The Majlis can refer to a legislature as well and is used in the name of legislative councils or assemblies in some states of the Islamic world.”

8. At this juncture, it is also quite apt to reproduce the proceedings dated 15.06.2007, which reads as under:

ANDHRA PRADESH STATE WAKE BOARD

**Raczak Manol, Haj House
Hidg, Opp Public Gardens
Nampally, Hyderabad**

Dated: 15-06-2007

F.No. Gen/DM/Z-1/06

From

To

**The Chief Executive Officer,
A.P State Wakf Board,
Hyderabad.**

**Sri Syed Waheeduddin,
Hyder Jaffery, Secretary,
Shia Imamia Ithna Ashri.**

Sir,

**Sub: Wakis Zone-1 Hyd. City - Ibadath Khana situated at
Darul Shifa - Hyderabad - Performance of Majlis-e-
Shadath of Shahzadi Fatima (SA) on 19/ 20th June
2007 at 7 30 p.m. respectively - Permission accorded
- Reg.**

**Ref:1. Representation, dated 04-06-2007 from Moulana
Syed Waheeduddin Hyder Jaffery (Akbari), Secretary
Anjumane Alvi**

2. Orders of the Special Officer, dated. 15-06-2007.

With reference to the representation, dated 04-06-2007 1st cited, permission is hereby accorded to Moulana Syed Waheeduddin liyder Jaffery, Secretary of Anjumane Alvi to perform the Majlis-e Shadath of Shahzadi Fatima (SA) on 19/20th June 2007 at 7.30p.m. (subject to Moon Sight) in the Ibadath Khana, Darul Shifa, Hyderabad by the Women members of Shia Community.

Yours faithfully.

CHIEF EXECUTIVE OFFICER

Copy submitted to:

concerned Authority of Ibadat Khana, Darul Shifa, Hyd for information and necessary action

9. From the above, this Court finds force in the contention of the learned Senior Counsel appearing for petitioner. When the Waqf Board permitted Shia Muslim women to enter into prayer halls, by their proceedings dated 15.06.2007, 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, is 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.

10. Therefore, there shall be an interim direction to 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.

Post on 03.01.2024.

//TRUE COPY//

SD/-MD.ISMAIL
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary, Minorities Welfare Department, State of Telangana, Telangana Secretariat Buildings, Hyderabad.
2. The Chief Executive Officer, Telangana State Waqf Board, Hyderabad.
3. Mr. Mir Hasnain Ali Khan, son of Mr. Mir Mehdi Ali Khan, President of Muttawali Committee of Ibadath Khana Hussaini, H. Nos:22-2-638,639,640,641,642,643, 644, 645 to 650, 664, 666, 667, 636 and 636, Darulshifa, Hyderabad-24, Resident of Plot No.67, Huda Enclave, Nandagiri Hills, Jubilee Hills, Shaikpet Hyderabad-33. (1 to 3 by RPAD- along with a copy of petition and affidavit)
4. One CC to Sri MIR LUKMAN ALI, Advocate [OPUC]
5. One CC to Sri ABU AKRAM (SC for Waqf Board) [OPUC]
6. Two CCs to GP FOR SOCIAL WELFARE, High Court at Hyderabad. [OUT]
7. One spare copy

HIGH COURT

NBK,J

DATED:06/12/2023

POST ON 03.01.2024

NOTICE BEFORE ADMISSION

WP.No.33130 of 2023

INTERIM DIRECTION

