

## Liyakat Marquise Khan Vs Christ Church College Society and Others

**Court:** Allahabad High Court

**Date of Decision:** Aug. 11, 2010

**Acts Referred:** Societies Registration Act, 1860 &" Section 25, 3, 3(2), 3A, 3A(2)

**Hon'ble Judges:** Ferdino I. Rebello, C.J; A.P. Sahi, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

### Judgement

1. In this appeal, the appellant has raised an issue that the impugned order dated 24.05.2010, whereby the learned Single Judge has directed the

papers to be forwarded to the State Government for consideration of the issue u/s 3B of the Societies Registration Act, 1860, suffers from an

error of law and consequently, it ought to be set aside.

2. A few facts may be necessary to consider the controversy, which arises in this matter. There is a Society known as Christ Church College

Society, Kanpur registered under the provisions of Societies Registration Act, 1860 (hereinafter referred to as "the Act"). It was registered on

30th of May, 1956. It has its own memorandum, rules and regulations. It runs Christ Church College, Kanpur.

3. There is also a Trust known as The Church of North India, which was inaugurated on 29th November, 1970 and within the said Church, there

is Diocese of Lucknow and the first Bishop was Rt. Reverend Deen Dayal, who was installed on 13th December, 1970. The Lucknow Diocesan

Trust Association (hereinafter referred to as the "LDTA") is a charitable and a religious Trust incorporated in the year 1924 and registered under

the Indian Companies Act, 1913. All the properties of the Church particularly the Church of India, Pakistan, Burma and Ceylon were owned or

managed and controlled by the LDTA. After the unification of Churches, all the properties within the Diocese of Lucknow were under the

jurisdiction of the LDTA. The Registrar of the Societies after the year 1970 accepted the resolution passed by the Society with Rt. Rev. Deen

Dayal, Bishop of Lucknow, Church of North India, as its Chairman. List of elected members was submitted to the Registrar of Societies who

accepted the same and has renewed the certificate of registration of the Society from time to time.

4. It is set out that the Diocesan Council of the Lucknow Diocese made a recommendation dated 21.8.1973 to the Executive Committee of the

Synod of the Church of North India for its division, i.e. Diocese of Lucknow and Diocese of Agra covering its defined territory. The Western part

as defined, came under the Dioceses of Agra and the Eastern part came under the Diocese of Lucknow. On 9th April, 1976, the first meeting of

the Diocesan Council of the Diocese of Agra was held and from the date, as per the constitution of the Church of North India, both the Diocese of

Lucknow and LDTA effectively divested all their rights, duties, functions, liabilities, assets etc. and vested beneficial ownership to the Diocese of

Agra for all times to come through Bishop of Agra in the territories of Agra till a charitable Company was incorporated in October, 1988 with the

approval of Executive Committee of the Church of North India, Synod. Accordingly, the Agra Diocesan Trust Association (hereinafter referred to

as the "ADTA") has been incorporated as Charitable Company in October, 1988. The Bishop of the Diocese of Agra is the Chairman of the

ADTA. Kanpur was included in the Diocese of Agra. It is stated that in view of this, the jurisdiction of the Christ Church College Society, Kanpur

shifted from the Diocese of Lucknow to Diocese of Agra. The first Bishop of Diocese of Agra was Rt. Rev. A.V. Jonathan.

5. It is stated that the creation of Diocese of Agra, incorporation of ADTA, and appointment of Bishop of Agra, it became necessary to

incorporate changes in the Memorandum and Rules and Regulations of Christ Church College Society, Kanpur. Accordingly, in the year 1986, a

resolution was passed for amendment in Rules and Regulations of the Society and the resolution and the amended Memorandum and Rules and

Regulations of the Christ Church College Society, Kanpur were submitted to the Registrar of Societies for intimation. The registration of the

Society was renewed from time to time and it was last renewed on 18th February, 2006 w.e.f. 10th October, 2005 for a period of five years.

6. It is, therefore, stated that in view of the aforementioned facts, the Lucknow Diocese and LDTA ceased to have any jurisdiction over either the

property in which the college is situated or the property of the college itself and have nothing to do with the college.

7. One Cornel Swing submitted an application dated 25th October, 2009 before the Deputy Registrar for registering the Governing Body of the

Society of the Church of India u/s 4 of the Act on the basis that a body was elected in the election conducted by the Members of the Society of

Church of India. It was further set out that as per Clause 49 of the bye-laws of the Society, none of the proceedings or acts of the society, shall be

valid without the assent of Bishop of Lucknow of the Church of India for the time being. The Bishop of Lucknow has power to control, manage

and run the institutions of the Society as per the registered Bye-laws of the Society It was, therefore, requested to register the Governing Body of

the Society.

8. One Liaquat M. Khan moved an application before the Deputy Registrar for cancellation of the renewal certificates of the Society. It was set

out that some persons had filed unauthenticated identification and documentation, which had no connection with the Anglican Church of India,

Pakistan, Burma, Ceylon and had frequently succeeded in getting the certificate of the society, which is gross violation of the society Act and

against the norms of the Society memorandum and as such, the said certificate is liable to be cancelled. A fraud was alleged. Some other facts

were set out and brought to cancel the renewal certificate issued to S.R. Cutting, so called member of the College.

On notice being issued to the Management Committee of the Society, the Secretary filed a reply and also sought some documents. Thereafter on

28th of April, 2010, the Deputy Registrar passed an order cancelling the renewal certificate issued in favour of the petitioner-Society and directed

Bishop S.P. Prakash to submit the papers and fees for renewal of the registration of the Society. It is this order, that has been impugned in the

present writ petition.

9. At the hearing of this appeal, both parties agree that there is no dispute that the application for renewal could have been made. The only

objection is as to whether the party who had applied for renewal of registration could have done so. In other words, at the relevant time, whether

they were the real office bearers of the Society. The question as to whether there was an amendment to the bye-laws and that was placed before

the Registrar is a question of fact. It is submitted that these issues are not covered by Section 3B of the Act and accordingly, the impugned order

on that count, is liable to be quashed and set aside.

10. Section 3B of the Act reads as follows:

3B. Reference to the State Government. - If any question arises whether any society is entitled to get itself registered in accordance with Section 3

or to get its certificate of registration renewed in accordance with Section 3A, the matter shall be referred to the State Government, and the

decision of the State Government thereon shall be final.

Two other relevant sections are Sections 4 and 4A of the Act, which read as under:

4. Annual list of managing body to be filed. (1) Once in every year, on or before the fourteenth day succeeding the day on which, according to the

rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of

January, a list shall be filed with the Registrar of the names, addresses and occupations of the governors, council, directors, committee or other

governing body then entrusted with the management of the affairs of the society.

Provided that if the managing body is elected after the last submission of the list, the counter signatures of the old members, shall, as far as possible,

the obtained on the list. If the old office bearers do not countersign the list, the Registrar may, in his discretion, issue a public notice or notice to

such persons as he thinks fit inviting objections within a specified period and shall decide all objections received within the said period.

(2) Together with list mentioned in Sub-section (1), there shall be sent to the Registrar a copy of the memorandum of association including any

alternation, extension or abridgement of purposes made u/s 12, and of the rules of the society corrected up-to-date and certified by not less than

three of the members of the said governing body to be a correct copy and also a copy of the balance-sheet for the preceding year of account.

4A. Changes etc., in rules to be intimated to Registrar.

A copy of every changes made in rules of the society and intimation of every change of address of the society, certified by not less than three of the

members of the governing body shall be sent to the Registrar within thirty days of the change.

11. Considering the above, the question for our consideration, is as to whether the impugned order suffers from illegality and consequently, it is

liable to be set aside. As pointed out earlier, there is no dispute and the only question is as to whether the application made for registration could

have been made by the office bearers and factually in the light of the evidence on record, whether in fact the change in the rules was intimated to

the Registrar considering the annual list of the managing body, which has been filed from time to time after 13th December, 1970.

12. In our opinion, Section 3B of the Act is attracted, when any Society applies for registration. The provision for renewal is contained in Section

3A of the Act. There is no dispute that when the Society was registered considering its objects, its application was not rejected. Section 3B really

would not apply, as the renewal can only be refused on the grounds on which the registration could not have been ordered. There is no dispute that

the Society was registered. In other words, the objects were within the scope of the Act. No dispute has been raised that the objects by the

purported amendment have been altered which would result into the Society not being entitled to be registered. Once that be the case, the question

of reference to the State Government would not arise, as there is no dispute, which could be referred within the meaning of Section 3B of the Act.

In the light of that, the impugned order is liable to be set aside.

13. The question, however, does not end with answering the said issue. It may be pointed out that u/s 4A of the Act, in case of amendment of the

rules, all that is required, is that the changes have to be brought to the notice of the Registrar in the manner provided therein. That would be a

finding of fact. The Registrar in that context will have to examine considering U.P. Act No. 26 of 1976, if entitled too, as to who had applied for

registration after the said amendment.

14. The real controversy before the Registrar would be, firstly, as to who are the office bearers of the Society in terms of the Memorandum, who

had applied for renewal and secondly, as contended by the appellant before the Registrar, whether an amendment had been carried out to the bye-

laws of the Society.

15. As pointed out earlier, Section 4A of the Act does not require any adjudication on the part of the Registrar. All that, he has to examine, is

whether there has been an amendment and that amendment has been certified by not less than three of the members of the governing body. If the

renewal was granted after the amendment of the bye-laws, the issue of change in the nature of the objects would not arise. In the present case, the

application made before the Deputy Registrar was on the ground that there has been an amendment and, that amendment, in terms of the letter of

Liaquat M. Khan, was done illegally. In that context, though the registration was renewed and valid for a period of 5 years from 10.10.2005 and in

normal course, it will expire on 09.10.2010, considering the dispute, the question, if any, is whether the office bearers of the Society, who had

applied for renewal, were office bearers in terms of the list filed before the Registrar and after renewal had been granted, is it open to the Registrar

after several years to re-consider the issue and whether for that purpose, the Act confers any power. Secondly, if the Registrar, prima facie, comes

to a conclusion that there is a dispute as to the list of office bearers, then that cannot be considered u/s 4 of the Act and, that can be resolved only

u/s 25 of the Act.

The Registrar in the matter of amendment considering Section 4A of the Act, will have the power to examine whether the amendments of the bye-

laws forwarded to him are from the list of office bearers taken on record u/s 4 of the Act and at the time of renewal, to examine whether the

amendments are such that renewal has to be granted.

16. Our attention was invited to a judgment of a coordinate Bench of this Court in Muzaffar Hussain and Ors. v. Assistant Registrar, Firms,

Societies and Chits, U.P. Meerut Region, Meerut and Ors. reported in 1987 All. L.J. 728, where considering the provisions of the Act, the

learned Bench observed that the application for renewal has to be considered by the Registrar in the light of criteria laid down in Section 3(2) of

the Act and, if there is specific objection raised not by mere strangers and the objection is not such as might be discarded prima facie as

meaningless or untenable, the Registrar must follow the directive laid in Section 3B. The learned Bench further observed that what is applicable for

renewal is also the application insofar as Section 3A (2) of the Act is concerned.

In the instant case, according to the parties, the amendments were placed on record and the names of office bearers subsequent to that have been

placed before the Registrar in terms of the Act. In the light of that, in our opinion, the judgment, as pointed out, would not be applicable.

17. In the light of that, the judgment and order of the learned Single Judge referring the parties to the State Government is set aside and the matter

is remanded back to the Deputy Registrar for hearing both the parties and for passing an order in accordance with law in terms of our judgment. If

in the course of hearing, the Deputy Registrar arrives at a conclusion that there is a dispute as to who are the office bearers, the matter be referred

to the Prescribed Authority.

18. The order impugned stands modified, accordingly. The appeal is disposed of. No order as to costs.

Appeal is disposed of.

For orders, see order of date passed on separate sheets.

Civil Misc. Delay Condonation Application No. 226867 of 2010

This application has been filed for condoning the delay in filing the appeal.

For the reasons given in the affidavit filed in support of the delay condonation application, the delay in filing the appeal is condoned.