(2010) 05 AHC CK 0330

Allahabad High Court

Case No: Special Appeal No. 615 of 2010

Allahabad High School Society and Another		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 20, 2010

Acts Referred:

- Constitution of India, 1950 - Article 142
- Societies Registration Act, 1860 - Section 12D, 12D(1), 2, 4, 4A
- Uttar Pradesh Societies Registration Rules, 1976 - Rule 11, 14, 17, 18, 19

Citation: (2011) 3 AWC 2330

Hon'ble Judges: V.M. Sahai, J; Jayashree Tiwari, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

V.M. Sahai, J.

This intra court special appeal has been filed challenging the judgment of the learned single Judge dated 16.4.2010. passed in Civil Misc. Writ Petition No. 9598 of 2010.

2. We have heard Shri Ashok Khare learned senior counsel assisted by Shri Siddharth Khare and Shri H.R. Misra learned senior counsel assisted by Shri K.V. Singh for the Appellants, Shri T.P. Singh learned senior counsel assisted by Shri Prabhakar Awasthi for Respondent No. 4, Shri Shailendra learned Counsel appearing for the Respondent No. 5 and standing counsel appearing for the Respondent Nos. 1 to 3. We have not issued notice to Respondent No. 6 as he is already a party to this appeal in his official capacity as Respondent No. 3 and the allegation of mala fide against him has not been argued by the counsel for the Appellants. The parties have exchanged affidavits. Counsels for the parties have

agreed that this appeal be decided finally at the admission stage. With the consent of the learned Counsels for the parties we have taken up this appeal for final disposal. We have heard counsels for the parties at length.

3. Before adverting to rival submissions made by learned Counsel for the parties it is necessary to narrate, in brief, the factual background of the case in which the Assistant Registrar, Firms, Chits and Societies, Allahabad (in brief the Assistant Registrar) has issued notices to the Appellants. We have divided the facts under seven sub-heads: (1) history of the Society, (2) unamended Rules 1952, (3) amendments made on 28.5.2007 in Rules, Constitution, and Bye-laws and its comparative chart with 1952 Rules, Constitution, and Bye-laws, (4) properties of the Society, (5) facts from records of the proceedings of the Governing Body, Agenda and Annual General Meeting of the Society produced by the Appellants, (6) facts from the old records produced by the Appellants, (7) complaints made by the Respondents before the Assistant Registrar.

Facts of the Case

(1) History of the Society.--The institutions named as Boys'' High School (in brief B.H.S.) and Girls'' High School (in brief G.H.S.) were established in the year 1861 to provide education on a Christian basis in accordance with the practices of the Church of India. The Allahabad High Schools'' Society, Allahabad (in brief the Society) was registered on 21.2.1888 under the Societies Registration Act, 1860 (in brief the Act) to manage the two institutions in accordance with the Articles of Association. Rules and Regulations, Bye-Laws. The Constitution laid down the objects of the Society.

The Memorandum (1952) of the Society described the name and objects of the Society. The Constitution of the Society gave the objects of the Society in detail. The Rules were framed for carrying out the objects of the Society mentioned in the Memorandum and the Constitution and for efficient functioning of the Society. It was registered under the Act in 1952. Bye-laws of the Society were passed on 24.11.1953 for delegating some of the powers of governing body to the two management committees, one for B.H.S. and one for G.H.S.

(2) Unamended Rules, 1952.--The Rules of the Society provided for four types of membership, ex-officio members, life members, ordinary members and honorary members. Rule 3 which enlists the various category of persons eligible to become members under the above mentioned heads is extracted below:

(i) Ex-Officio Members.--The following shall be Ex-officio members, namely,

(a) The Bishop of Lucknow

(b) The Commissioner of Allahabad-Jhansi Division

(c) The Collector of Allahabad

(d) The Priest in charge of All Saints'' Cathedral, Allahabad

(e) The Secretary of the Education Board of the Lucknow Diocesan Council

(f) The Headmaster of the Boys'' High School, Allahabad

(g) The Headmistress of the Girls'' High School, Allahabad

(ii) Life Members: A person who has subscribed a sum of not less than one thousand rupees to the Society shall, subject to the approval of the Governing Body, be a life member

(iii) Ordinary Members: Any person who agrees to pay the prescribed monthly subscription shall be eligible for election as an ordinary member

(iv) Honorary Members: Any person not already a member of the Society who is elected an officer of the Society or a member of the Governing Body shall be an honorary member.

Further, Rules 6, 7 and 8, which provide as to who would be the office bearers of the Society and how their elections were to be held is as follows:

6. Officers: The officers of the Society shall be the Chairman, the Vice-Chairman, the Secretary and the Treasurer.

7. Chairman: The Bishop of Lucknow, unless he be unwilling to act shall be the Chairman of the Society.

8. Election of Officers: The Chairman, (if the Bishop of Lucknow be not willing to act), the Vice Chairman, the Secretary and the Treasurer shall be elected by the Society at the Annual General Meeting and shall hold office until the conclusion of the next Annual General Meeting.

Subject to the provisions of Rule 18, the general power of the governing body is detailed in Rule 17 to do all such act for the furtherance of the objects of the Society, and things which the Society could itself do and things which were not required to be done by the Society, by the statutes expressly, could be done by the Society in the Governing Body meeting. Rule 18 appears to be a proviso to Rule 17.

For our purpose. Rule 18 is important and is extracted herein-below:

18. Overriding Power of the Bishop of Lucknow: The Bishop of Lucknow shall have" an overriding power to declare invalid any resolution of the Governing Body which in his opinion, contravenes the Constitution, Canons or Rules of the Church of India, Pakistan, Burma and Ceylon but such power must be exercised within 14 days of the said resolution being brought to his knowledge."

It was explained in the definition clause of the Rules that in Rules 3, 7 and 18 the expression "Bishop of Lucknow" could also be read Bishop Commissary. In the absence the Bishop of Lucknow and Bishop Commissary could exercise powers

under Rules 3, 7, and 18.

Additionally, Rule 38 provided for amendment in the Rules of the Society which may be altered, amended or revised in a specially called meeting for alteration, amendment or revision of the Rules and the amendment could be made, if it was approved by at least three quarters of the members of the Society present at such a meeting. It is necessary to extract Rule 38 which is as follows:

38. These Rules may be altered, amended or revised only at a meeting of the Society specially called for the purpose and then only if approved by at least three quarters of the members of the Society present at such a meeting.

When the Rules of the Society were made in the year 1952 Allahabad and Jhansi Division were in one commissionary under one Commissioner but subsequently Allahabad and Jhansi became different commissionaries and the Original Rules 1952 and Alterations and Commissioner of Allahabad division became the ex-officio member of the Society.

Under the aforesaid Memorandum, Rules, Bye-laws and Constitution, the Society was managing B.H.S. a premier minority Christian institution imparting education in English medium and it has produced large number of Judges, Actors, Diplomats, Bureaucrats, Management Experts, Doctors, Lawyers and the students of this institution are occupying very high positions in the country. Similarly, G.H.S. had also produced eminent girl students. The Society had also opened one new institutions, namely. Holy Trinity School, Allahabad in 1988 (in brief the H.T.S.) and had adopted Mary Lucas School and College in the year 1990, in the city of Allahabad (in brief the M.L.S.).

(3) Amendments made on 28.5.2007 in Rules, Constitution and Bye-laws and its comparative chart With 1952 Rules, Constitution and Bye-laws.--To read the original Rules, Constitution and Bye-Laws of 1952 in juxtaposition with the amendments made in the Rules, Constitution and Bye-Laws on 28.5.2007, the following charts would be helpful:

Amendments made in it on 28.5.2007.

Rule No.	Original Rules of 1952	Altered Rules by amendment made on 28.5.2007	Remarks

1.	In Rules 3, 7 and 18, the expression "the Bishop of Lucknow" shall mean the Bishop of Lucknow and in his absence the Bishop''s Commissary		Deleted
3.	"(i) Ex-Officio Members: The following shall be Ex-officio members, namely, (a) The Bishop of Lucknow (b) The Commissioner of Allahabad-Jhansi Division.		All deleted
''	(c) The Collector of Allahabad (d) The Priest in charge of All Saints'' Cathedral, Allahabad. (e) The Secretary of the Education Board of the Lucknow Diocesan Council (f) The Headmaster of the Boys'' High School. Allahabad (g) The Headmistress of the Girls'' High School, Allahabad (ii) Life Members: A person who has subscribed a sum of not less than one thousand rupees to the Society shall, subject to the approval of the Governing Body, be a life membership	-	

	(iii) Ordinary Members: Any person who agrees to pay the prescribed monthly subscription shall be eligible for election as an ordinary member.		
	(iv) Honorary Members: Any person not already a member of the Society who is elected an officer of the Society or a member of the Governing Body shall be an honorary member."		
4.	Termination of Membership:		
	(e) on his absence from India for six consecutive months;		Deleted
	(f) if any honorary member, on his ceasing to be a member of the Governing Body.		Deleted
7.	Chairman: The Bishop of Lucknow, unless he be unwilling to act shall be the Chairman of the Society.		Deleted
9.	Duties of Secretary:		
	(c) appoint and dismiss such clerks and servants as he shall consider necessary and upon such terms as he shall deem fit;		Deleted
11.	Governing Body	Governing Body	Altered

	Constitution: The management of the affairs of the Society shall be vested in the Governing Body which shall consist of the officers of the Society and not less than twelve, not more than nineteen, other persons, and shall include not less than three ex-officio members. The members of the Governing Body shall be elected by the Society at its Annual General Meeting and shall hold office until the conclusion of the next Annual General Meeting.	Constitution: The Management of the affairs of the society shall be vested in the Governing Body which shall consist of officers of society and not less than 7 other members. The members of the Governing Body shall be elected by the Society at its Annual General Meeting and shall hold office for a term of five consecutive years and may or may not be reelected.	
13.	Termination of Membership of the Governing Body	Termination of Membership of the Governing Body	Altered

	If any member of Governing Body shall become insolvent or of unsound mind or cease to reside in the Diocese of Lucknow for a period of more than six consecutive months or shall signify to the Chairman his desire to retire, he shall, from the date of the happening of any such event, cease to be a member of Governing Body.	If any member of Governing Body shall become insolvent or of unsound mind or cease to reside in India for a period of more than a year or shall signify to the Chairman his desire to retire, he shall, from the date of the happening of any such event, cease to be a member of Governing Body.	
17.	General Powers: (c) to promote and contribute to any enterprise which shall have for its object the making or doing of any work or thing conducive directly or indirectly to the attainment of the objects of the Society ;		Deleted

	(g) to appoint upon such terms as it deem fit the Principal and assistant teachers of the schools or colleges conducted by the Society ; such persons being, if possible, communicant members of the Church of India, Pakistan, Burma and Ceylon, or of a Church in communion with it, and to suspend or discharge any principal and teacher.	To appoint and dismiss upon such terms as it deems fit the Managers, Directors, Bursars, Principal, Head Master, Head Mistresses of the Schools or Colleges through the Officers of the Society in writing in the name of the Chairman, such appointments shall then be confirmed by the House.	Altered
	(i) to appoint a Priest of the Church of India, Pakistan, Burma and Ceylon or of church in communion with it, and duly licensed by the Bishop of Luck-now, as School Chaplain ; and to suspend and discharge him.		Deleted
18.	Overriding Power of the Bishop of Lucknow:		Deleted

	The Bishop of Lucknow shall have an overriding power to declare invalid any resolution of the Governing Body which in his opinion, contravenes the Constitution, Canons or Rules of the Church of India, Pakistan, Burma and Ceylon but such power must be exercised within 14 days of the said resolution being brought to his knowledge		
38.	Amendment to the Rules These rules may be altered, amended or revised only at a meeting of the Society specially called for the purpose and then only if approved by at least three quarters of the members of the Society present at such a meeting.	Amendment to the Rules These rules may be altered, amended or revised only at a meeting of the Society specially called for the purpose and then only if approved by at least three-fourth of all the members of the Society.	Explained and altered

The Constitution of the Society which laid down the objects of the Society in detail was amended and Bishop of Lucknow Diocese and the Church of North India (in brief the C.N.I.) appears to have been omitted from the Constitution. The relevant part of the Constitution and the amendments made therein are as follows:

Relevant part of Original Constitution of 1952

CONSTITUTION

The object of this Society is to advance the cause of Christian education in Allahabad according to the teaching of the Church of England as by Taw established, due provision being afforded by means of a conscience clause for the children of these parents who for any reason prefer that their children be not instructed in the

distinctive doctrines of the Church of England), especially amongst the children of the European and Anglo-Indian population, in conformity with and agreeably to the provisions of the Rules of the said Society hereto annexed.

Relevant part of Amended

Constitution on 28.5.2007

CONSTITUTION

(Amended in the year Lord two thousand and seven)

THE ALLAHABAD HIGH SCHOOL SOCIETY

(To be read in conjunction with Rules of The High School Society)

The object of this Society is to advance the cause of Christian education in Allahabad according to the teachings of the Church of India, Pakistan, Burma and Ceylon as by law established (due provision being afforded by means of conscience clause for the children of those parents who for any reason prefer that their children be not instructed in the distinctive doctrines of the Church of India, Pakistan, Burma and Ceylon, especially amongst the children of the European and Anglo-Indian population, in conformity with and agreeably to the provisions of the Rules of the said Society hereto annexed.

The Society shall consist of the Bishop of Lucknow and of other Members not exceeding 23, three of whom shall be respectively the Senior Chaplain for the time being of the Church of England at Allahabad, the Commissioner for the time being of the Allahabad Division, and the Collector for the time being of the Allahabad District, provided they do not decline the office, and the remainder such persons of their sex as may be elected by the existing Members of the Society provided that there shall always be in the Society a majority of persons who are Members of the Church of England and residents of Allahabad. The Society shall have power to fill up vacancies as may from time to time occur by election and should any Member other than the four ex-officio Members be absent from the meeting of the Committee for a whole year or tender his resignation, and in the case of the ex-officio Members should any of them respectively cease to hold the office of Bishop, Senior Chaplain of the Church of England, Commissioner of the Allahabad Division or Collector of Allahabad District, then in such case the seat of the Member so absent or vacating office shall become vacant.

....

....

The school shall be conducted in accordance with the principles of the Church of England, but shall be so regulated as to be available for children of all denominations, instruction in the distinctive doctrines of the Church of England not

being compulsory on any child whose parents object thereto.

The schools shall be subject to the inspection of Government and of the Diocesan Council. There shall be daily prayers and regular scriptural instruction, which all the scholars shall attend. The Masters and Mistresses shall, if possible, be Members of the English Church. The Senior Chaplain of the Station shall be ex officio a Member of the Society.

....

....

The affairs of the Society shall be managed by all members of the Society through a Governing Body duly elected every five years, from amongst them. In conformity with the stated Rules of the Society, the Honorary Secretary and the Honorary Treasurer shall have authority to execute all contracts and deeds on behalf of the Society.

....

....

The Bye-law No. 7 was also deleted Bye Laws of Society 24.11.1953

BYE LAWS, AS PASSED IN THE MINUTES OF THE GOVERNING BODY DATED NOV. 24, 1953

Bye Laws, In terms of Article No. 17 (j) the following Bye Laws were considered and passed.

....

....

7. That the Headmaster and Headmistress of the Schools shall be the Honorary Secretary of the Managing Committee in each case.

(4) Properties of the Society.--The question arises that in whom the property of the Society is vested? The members of the governing body are the trustees of the property of the Society. The property, whether movable or immovable, vests with the Society''s trustees. According to Section 5 of the Act if the movable and immovable property belonging to a Society registered under the Act if not vested in the trustee, shall be deemed to be vested in the governing body of the Society.

A public notice was issued on 4.5.2010 by Mr. C.V. Innis which was pasted in four institutions, B.H.S. G.H.S. H.T.S. and M.L.S. to the effect that all the four institutions and their properties belong to the Society and Bishop of Diocese of Lucknow or C.N.I or the Government has no right over it. This notice was issued while this appeal was being heard by this Court.

Mary Lucas School and College.-- It is relevant to point out over here that M.L.S. belonged to Diocese of Lucknow, C.N.I, and in the meeting held on 28.11.2005 it was adopted by the Society for management from the Diocese of Lucknow, C.N.I.

A resolution was passed by the Society in the meeting held on by amendment which is as, below:

Amended Bye Laws of Society on 28.5.2007

Deleted

23.11.2006 to the effect that M.L.S. which was being managed by a subcommittee of the Society, be henceforth brought under the Society as an integral unit of the Society and all steps/actions required to merge the school be taken.

The Diocese Education Board Executive Committee in its meeting dated 31.10.2009 had taken back M.L.S. from the Society vide resolution No. DEB/Ex-4-2009 which was given in the management of B.H.S. for development and management of the school.

Holy Trinity School.--This school did not belong to the Society. It was established in the year 1988 and is known as Boys'' High School Annexe (Holy Trinity Church Campus). The Bishop of Lucknow (C.N.I.) is the Chairman of the school. The Sub-Divisional Magistrate, Sadar, Allahabad had issued a notice No. 5518/ST dated 8.4.2008 to the effect that the property of H.T.S. belongs to the State of Uttar Pradesh and illegal constructions are being made on it. Learned Counsel for the Respondent has filed the letter of Mr. C.V. Innis written to S.D.M. Sadar, Allahabad, Annexure-7 to the supplementary counter-affidavit-II. Mr. C.V. Innis replied to the notice. Paragraph (i) of the reply was as follows:

"(i) The property in question is not a State land, it is not under the direct or indirect control of the State Government. The said property is recorded as property of "Bishop of Lucknow, Diocese Trust Association, Allahabad." As per municipal record.

The Bishop of Lucknow, Diocese Trust Association Allahabad is the Attorney of Indian Church Trustees. Since all such properties comes under ''Indian Church Trustees'' in the revenue records/Khatauni No. 1 1413 fasli, Gata No. 29 area 2.911 Hectare, the said property has been recorded as ''Abadi Girjaghar''. Therefore, the allegation that the said property is a ''State land'' is baseless."

From the aforesaid admission of Mr. C.V. Innis it appears that H.T.S. Allahabad and its properties is the property of the Bishop of Lucknow Diocese.

Boys'' High School and Girls'' High School.--The Appellants alongwith the Supplementary Rejoinder Affidavit filed on 7.5.2010 sworn on 6.5.2010 have filed two lease deeds as Annexures SRA-6 and SRA-7. These lease deeds were executed on 21.11.1912 and 21.9.1911 in the name of the Secretary, Girls'' High School, Allahabad, Lease of Intra-Municipal land in Civil Line Station, Allahabad for building purposes on 21.9.1912 by the Secretary of State. Both these lease deeds had not

been executed in the name of the Society.

Annexure SRA-8 is the copy of the sale deed dated 12.2.1943 executed by Governor of United Province in favour of the Society. The sale deed stated that the vendor will do everything necessary for assuring the premises to the Bishop of Lucknow. The sale deed was presented for registration by Right Reverend Sydney Bill, Bishop of Lucknow at the office of Sub-Registrar on 7.4.1943.

(5) Records of proceedings of the Governing Body, Agenda and Annual General Meeting of the Society, produced by the Appellants

The Assistant Registrar had produced the records. The Appellants through their counsel had produced the records of the Agenda and Proceedings of the meetings of the Society from the year 2003 to 28.5.2007. The proceedings after 28.5.2007 had also been filed, which are loose papers kept in two files. The whiteness of the paper in record creates doubt as to the genuineness of the records and the records appear to have recently been prepared.

From the records of the proceedings produced by learned Counsel for the Appellants we find that a meeting of the Society was held on 30.11.2007, 9.12.2008 and 30.3.2010 but in none of the meetings any election took place or enhancement in age of superannuation of teaching and non-teaching staff was made nor any extension to them after retirement was granted.

Shri Khare has also produced four more files which also contain loose old papers which are agenda and proceedings of the Governing Body and the Annual General Meeting of earlier years, that is to'' say prior to the year 2003 but we find that the records are incomplete. Shri Ashok Khare on the instruction of his client made a firm statement before the Court that these documents are original documents and there is no other original records of proceedings, with regard to the Governing Body Meeting or the Annual General Meeting or any other meeting available with the Appellant. In view of the statement made by Shri Khare we accept the records to be original records. We had examined the records alongwith the learned Counsel for the parties. While examining the original record of the meeting held on 23.11.2006 we find that the Annexure-SRA-II filed by the Appellant in the supplementary rejoinder-affidavit sworn by Mr. C.V. Innis appears to be a manufactured document.

In the original record of the meeting held on 23.11.2006 produced by the Appellants, (a) Increase in Age of Retirement reads as below:

(a) Increase in Age of Retirement

It was proposed and unanimously resolved to raise the retiring age limit of teaching staff from 58 years to 62 years from the new academic year. Further it was resolved that the Boys High School and College adopt the E.P.F. guidelines and to bring uniformity between the Boys High School and College and the Girls High School and College. The pension scheme will also be on similar guidelines.

We are also reproducing the minutes of meeting held on 23.11.2006, filed as Annexure-SRA-II at page 72 by the Appellants alongwith the supplementary rejoinder-affidavit sworn on 6.5.2010 by Mr. C.V. Innis as below.

(a) Increase in Age of Retirement

It was proposed and unanimously resolved to raise the retiring age limit of management staff from 60 years to 65 years and teaching and non-teaching staff from 58 years to 62 years from the new academic year 2007-08. Further it was resolved that the Boys High School and College adopt the E.P.F. guidelines and to bring uniformity between the Boys High School and College and the Girls High School and College. The pension scheme will also be on similar guidelines.

In the original records retiring age limit of management staff had not been raised from 60 years to 65 years nor the age limit of non-teaching staff had been raised from 58 years to 62 years from the new academic year 2007-08. Why the age of retirement of teaching staff was treated to be 58 years which required enhancement is not understandable. From the records produced by the Appellants as well as Annexure-SA-2 to the supplementary-affidavit-IV filed by the Respondent is the final notice dated 27.11.1985 for the Annual General Meeting/Governing Body Meeting fixed for 12.12.1985 of the Society, has been brought on record by the Appellant which shows the agenda of the Governing Body Meeting at item No. 5 "Retiring Age for Principal -Adoption of D.E.B. Resolution"

From the records and Annexure-SA-3 to the supplementary-affidavit-IV filed by the Respondents we find that the Society in the Governing Body Meeting held on 12.12.1985 at 4.00 p.m. by a resolution No. 5/85 accepted and adopted the Diocesan Education Board (D.E.B.) Resolution dated 10.1.1985. The resolution dated 12.12.1985 is as below,

"Business Arising:

(a) The following D.E.B. Resolution as recommended by the respective Managing Committees of the Boys'' High School/Girls'' High School and the Joint Finance Sub-Committee was considered and adopted in principle with the proviso if mentally and physically fit to go on to the age of 65 years.

D.E.B. Resolution:

3/85 adopted at their 22nd meeting held on 10th January, 1985, at the Bishop''s House:

3/85 (a) Resolved to fix the retiring age of the Principals of the English Medium Schools, governed by the Anglo-Indian Education Code, of the Diocese of Lucknow at sixty years, with the proviso that yearly extensions up to a maximum of five years may be given depending on the mental and physical fitness and performance of the incumbent.

From the aforesaid resolution it is clear that the age of superannuation of Principals had been enhanced in 1985 from 58 years to 60 years and extensions could be granted up to 65 years conditionally. Mr. C.V. Innis was appointed in the year 1988. The question arises that why again the age of superannuation of the teaching staff (which also includes Principal) was enhanced from 58 years to 62 years in the meeting held on 23.11.2006 by manufacturing the resolution of meeting dated 23.11.2006.

(6) Facts from the old records produced by the Appellants

In the old records produced by the Appellants we find an agreement on a stamp paper of eight annas dated 18.1.1936 between Diocese of Lucknow represented by the Bishop of Lucknow called the Diocese of one part and Allahabad High Schools Society, represented by the Chairman, the Honorary Secretary and the Honorary Treasurer, called the Society of the other part. Diocese in its European Board, Minute 13 of 17th January, 1935 accepted the report of its Sub-Committee recommending the amalgamation of the Colvin School and Bishop Johnson Orphanage with Boys'' and Girls'' High Schools, Allahabad respectively.

It was agreed between the Diocese and the Society that Diocesan Nomination Board shall be constituted for the purpose of nominating Head Master, B.H.S. and Lady Superintendent (Head Mistress) of G.H.S.

Diocesan Nomination Board consisted of the Bishop of Lucknow, the Cathedral Chaplain who in the absence of the Bishop shall be Chairman and shall always be the Secretary and the Head Deaconess. The Diocese and the Society mutually agreed to proceed in accordance with Rules of the Diocesan Nomination Board. This agreement was signed by all the parties to the agreement.

In the old records produced by the Appellants we also find a copy of the minutes of the Special Meeting of the society held on 13.5.1982 held in the Assembly Hall of B.H.S. It is necessary to extract the resolution No. 35/82 passed in the meeting as under:

"35/82. MEMORANDUM AND ARTICLES OF THE ASSOCIATION:

After a careful study of the Memorandum and Articles Of the Association of the Allahabad High Schools'' Society, Allahabad and incorporating the suggested amendments made by the Sub-Committee as far as possible it was resolved as follows:

(1) that the final draft as appended to these minute''s be accepted and recommended for registration as the Memorandum and Articles of the Association (1982) of the Allahabad High Schools'' Society, Allahabad.

(2) that from the list of ex-officio Members "The Collector of Allahabad" be deleted and that of "The Secretary Diocesan Education Board C.N.I. be added

(3) The Calendar Year:

that for the calendar year read "April to March each year"

(4) that for the word "Priest" substitute "Presbyter" wherever it may occur.

(5) that the further amendments or modifications be duly incorporated into the constitution as appended to these minutes.

(6) That the FINALISED MEMORANDUM AND ARTICLES OF THE ASSOCIATION (1982) of the Allahabad High School''s Society, Allahabad, be signed by the following seven persons and moved through the good offices of Mr. A.C. Grice for registration.

1. The Rt. Revd. Din Dayal, Bishop of Lucknow Chairman

2. Mr. R. D. De ''Camp, Secretary of the Society

3. Mr. A.T. Flynn, Principal, Boys'' High School, Allahabad

4. Mrs. Edna Revis, Principal, Girls'' High School, Allahabad

5. The Revd. W.O. Simon, Vice Chairman of the Society

6. The Revd. S.W. Saunders, Secretary, Diocesan Education Board, C.N.I.

7. Mr. A.C. Grice, M.L.A.

The copy of the appendix is also on record which mentions in detail the Memorandum and Articles of the Association (1982) The Allahabad High Schools'' Society. Allahabad dated 13.5.1982. It gives detail under various heads, namely. Memorandum and Articles of the Association (1982) The Allahabad High Schools'' Society, Allahabad it gives in detail Definitions, Membership, Officers of the Society, Management of the Institutions of the Society. Governing Body, General Powers of the Governing Body, General Meetings of the Society, Procedure at General Meetings, Banking Account, Audit Provisions, Notice, Indemnity, Suits by and against the Society, Amendments to the Rules and Miscellaneous. Allahabad High Schools Bye-Laws were also framed.

We could not find the Original Minutes of the Special Meeting of the Society held on 13.5.1982 or the Original Appendix on record which mentions in detail the Memorandum and Articles of the Association (1982) The Allahabad High Schools'' Society, Allahabad dated 13.5.1982. We also could not find the original or copy of the proceedings prior to or after the Special Meeting of the Society dated 13.5.1982.

(7) Complaint made by Bishop of Church of North India, Rt. Rev. Morris E. Dan to the Assistant Registrar, Firms Society and Chits, Allahabad

A copy of the Writ Petition No. 9598 of 2010 has been filed as Annexure-3 to this appeal. Annexure-10 to the writ petition is the complaint dated 1.10.2009 filed by Bishop of Lucknow, Diocese of Lucknow, C.N.I. Rt. Rev. Morris E. Dan before the

Assistant Registrar. The complaint was an objection against the amendments dated 28.5.2007 by which the Memorandum/Bye laws of the Society were amended. It was stated in the complaint that Diocese of Lucknow at Allahabad had been the apex body of the Society which was registered under the Act. The Society was registered in the year 1952. The Bishop of Lucknow was made the Chairman of the Society. In the complaint the objects of the Society mentioned in the Memorandum of 1952 was quoted and thereafter it was stated that there were four types of members and overriding powers were given to the Chairman the Bishop of Lucknow for overruling any resolution of the Governing Body. The Principal of M.L.S. on 22.9.2009 wrote a letter to the Bishop seeking information about the alleged amendments made in the Memorandum of Association and Bye-laws of the Society and the management committee. On 24.9.2009 in newspaper Northern India Patrika and Dainik Jagaran a public notice was published by Mr. C.V. Innis, the Secretary of the Society, to the effect that B.H.S. G.H.S. H.T.S. and M.L.S. were under the control and administration of the Governing Body and management of the Society and it was also mentioned that these schools were not under the Bishop of Lucknow, the Diocese of Lucknow, C.N.I.

Thereafter in the complaint details were given as to how the meetings for amendment took place and ultimately the amendments were passed in the special meeting on 28.5.2007. It was complained that by incorporating amendments in the Memorandum and Bye-laws of the Society, the basic structure of the earlier Memorandum and objects of the Society was demolished. These amendments came to the knowledge of the applicant only on 22.9.2009 and 24.9.2009. It was also pointed out that in the meeting for the purposes of amendment ex officio members namely the Commissioner and Collector of Allahabad had not been informed. The copy of the proposed amendment was not circulated amongst the members of the governing body. These facts were pointed out in the letters of Dr. S.C. Chand, ex-officio member of the Society and in the capacity of Secretary of Diocese Education Board. Mr. R.K. Gowan also stated that the proposed amendment was not circulated amongst the members of the Governing Body. It was alleged that the amendments in the Rules had demolished the basic structure of the Society which was an outcome of fraud and collusion between Mr. Innis and erstwhile Bishop A.R. Stephen. The collusion of Bishop of Lucknow was established by the fact that he and Mr. Innis had concealed the fact of amendment and Mr. Stephen had destroyed the sanctity attached to the office of Bishop of Diocese of Lucknow and being the Chairman and head of the Society. Public notice in the newspapers was issued on 24.9.2009 after about more than two years as the Bishop of Lucknow had been won over prior to his retirement and coveted post of Chairman of the Society was offered to him, which he accepted. The collusion of Mr. Innis and Mr. A.R. Stephen was apparent from the fact that no ex officio member had been informed about the meeting for amendment. Rule 7 which provided that Bishop will be the Chairman of the Society had been omitted by amendment. Bishop Mr. A.R. Stephen was

completing his term on 5.6.2009, colluded with Mr. Innis who was to superannuate in the year 2008, the aim was that both may continue as Chairman and Secretary of the Society and Mr. Innis may also continue as the Principal of B.H.S. It was alleged that the amendments made on 28.5.2007 were illegal and it may be annulled and set aside.

Complaint made by Mr. Vinod B. Lal, Director Administration, Diocese of Lucknow, Church of North India to the Assistant Registrar

4. Another complaint was made by Mr. Vinod B. Lal, Director Administration, Diocese of Lucknow, C.N.I. on 9.10.2010 before the Assistant Registrar that amendments in the rules and bye laws of the Society have fraudulently been made and in the hearing he may also be granted permission to lead evidence. He also made a complaint on 11.12.2009 to the Assistant Registrar that the Society was an unregistered Society when the amendments were passed, therefore, the governing body or the members of the Society had no right to amend the Rules and Bye-laws of the Society. It was prayed that the fraudulent amendment be cancelled and the Society be directed to be governed by 1952 Rules.

Arguments of Learned Counsel for the parties

5. Shri Ashok Khare, learned senior counsel has vehemently urged that once the order of learned single Judge for expeditious disposal was set aside by Division Bench the notices issued by the Assistant Registrar became illegal.

6. He urged that by amending the Rules, the Constitution and the Bye-laws of the Society the objects of the Society had not been changed. He then urged that the Assistant Registrar had no jurisdiction to issue notice u/s 12D (b) of the Act on the basis of the complaints made by Morris E. Dan and V.B. Lal.

7. He urged that power u/s 12D is a power that is limited to cancellation of registration certificate of the Society if the circumstances mentioned therein exists. It has no concern with regard to the amendments of the Rules, Constitution and the Bye-laws. The complaint is not against the registration of the Society but the complaint is against the amendments made in the Rules and Bye-laws of the Society.

8. Shri Khare has lastly submitted that under the Act, no power is vested in the Assistant Registrar either to approve, disapprove or to adjudicate the validity or otherwise of any amendment to the Rules, Bye-laws and the Constitution of the Society.

9. Shri H.R. Misra learned senior counsel assisted by Shri K.V. Singh has also been heard at length. He has adopted the arguments of Shri Ashok Khare.

10. On the other hand, learned Counsel for the Respondents Shri T.P. Singh, learned senior counsel assisted by Shri Prabhakar Awasthi and Shri Shailendra have urged that the amendments were fraudulently made without any notice to the members

and the ex-officio members. The amendments made on 28.5.2007 were kept secret and was revealed only on 24.9.2009 when the public notice in newspapers was issued by Mr. C.V. Innis, Secretary of the Society. Immediately the Respondents inquired into the matter and made a complaint to the Assistant Registrar to the effect that by the amendments the basic structure of the Society and the objects of the Society had been changed. The institutions and the Society were to be under the control of the Bishop of Diocese of Lucknow, C.N.I. had been completely wiped out, which had resulted in striking at the basic structure of the Society. The high powered ex-officio members have been ousted from the Society so that there should be monopoly of Mr. C.V. Innis and he may treat the institutions as his private institutions and enjoy the fruits of it.

11. Shri Shailendra has further urged that Mr. C.V. Innis was the Principal, B.H.S. He became the Honorary Secretary of the Society from the date of his nomination/election as Secretary of the Society in the Annual General Meeting held on 28.2.2003. Till date he is continuing on two posts Principal of B.H.S. and Honorary Secretary of the Society, which is not permissible under the Rules of the Society. He forcefully urged that the Society is the appointing authority of the Principal, therefore, Mr. C.V. Innis cannot have a dual capacity of master and servant. Mr. C.V. Innis could not continue as Honorary Secretary and Principal.

12. Shri Shailendra has also urged that according to the age of superannuation enhanced in 1985 Mr. C.V. Innis, the Principal B.H.S. retired after attaining the age of superannuation 60 year, in September 1988. But Mr. C.V. Innis is illegally continuing as Principal on the basis of a manufactured meeting of the Society held on 23.11.2006. There are no proceedings on the records to the effect that Mr. C.V. Innis was granted extension of service after September, 1988.

12A. Shri Shailendra has vehemently urged that the nomination/election of Mr. C.V. Innis came to an end after one year. No nomination/elections were held nor any Annual General Meeting of the Society was held on 27.11.2004, 28.11.2005 and 23.11.2006. Rule 11 lays down that the Governing Body should consist of minimum 19 members. The Governing Body was illegally constituted contrary to the mandatory Rule 11 of the Rules, 1952 because from 28.2.2003 to 28.5.2007 there were less than 19 members in the Society, therefore, at no point of time the Governing Body had the minimum 19 members. Such a Governing Body or the members of the Society could not propose or amend the Rules, the Constitution and the Bye-laws of the Society.

13. Shri Shailendra has further urged that the power u/s 12D is a power to cancel registration certificate of the Society. If the basic structure and objects of the Society had been amended or altered, the registration certificate of the Society could be cancelled if the activities of the Society or proposed activities have been or are or will be subversive of the objects of the Society. He urged that the basic structure and objects mentioned in the Constitution are nothing but are part of the Memorandum

and it could not be altered by amendments by the Society, therefore, the Assistant Registrar had rightly issued notice u/s 12D (b) of the Act to the Appellants.

14. He urged that Rule 2 (d) of the Uttar Pradesh Societies Registration Rules, 1976, defines society which means a society registered under the Act. Only a registered society can apply for registration. On 28.7.2007 when the amendments were made in Rules, Bye-laws and Constitution of the Society or on 30.7.2007 the amendments were registered by the Assistant Registrar, the Society was an unregistered Society and the amendments of an unregistered Society could not be registered on 30.5.2007. But the registration of amendments was illegally obtained and it is liable to be cancelled by the Assistant Registrar.

He has then urged that properties of the four institutions were under the control and supervision of the Bishop of Diocese of Lucknow, C.N.I. and they were illegally thrown out of the Society which was an subversive activity of the Society.

He further urged that the institutions and its properties be protected by this Court from going into the hands of Mr. C.V. Innis and persons connected with him.

It was lastly urged by Shri Shailendra that Mr. C.V. Innis as Principal of B.H.S. was receiving a meagre salary. Mr. Innis alongwith his son Mr. Mitchell Innis had opened a private school known as Saint John''s Academy, Karchana, Allahabad and a school at Nainital in the State of Uttarakhand by siphoning the funds of the institutions managed by the Society.

14A. The learned standing counsel Shri Yogendra Kumar Yadav and Shri R.K. Tiwari have supported the notices issued by Assistant Registrar.

Whether notices issued by the Assistant Registrar mentioning order of High Court dated 16.12.2009 for expeditious disposal were illegal?

15. The Rules, the Constitution and Bye-laws were amended. In Civil Misc. Writ Petition No. 9598 of 2010 decided on 16.4.2010 by the learned single Judge the notices issued by the Assistant Registrar to the Appellants dated 2.2.2010 and 11.2.2010 had been challenged. But the fact of amendment of the Constitution and bye-laws on 28.5.2007 was concealed. The Petitioners/ Appellants did not come before the Court with clean hands. This special appeal deserved to be dismissed on this ground alone.

15A. A Civil Misc. Writ Petition No. 65108 of 2009 was filed by the Respondent No. 4, The Bishop, Diocese of Lucknow, C.N.I. for issuance of a writ of mandamus to the Assistant Registrar to decide his objection was opposed by the Appellants and the writ petition is pending.

16. Another Writ Petition No. 68521 of 2009 was filed by Mr. V.B. Lal, the Respondent No. 5 for issuance of a direction to the Assistant Registrar to decide his objection, which was disposed of on 16.12.2009 by the learned single Judge without issuing

any notice to the Respondents and a direction was issued to the Assistant Registrar to decide the objections dated 9.10.2009 and 11.12.2009 expeditiously, in accordance with law preferably within two months from the date of production of certified copy of the order.

17. The Appellants filed Special Appeal No. 201 of 2010 challenging the order of single Judge dated 16.12.2009. It was urged that Writ Petition No. 65108 of 2009 filed by Bishop, Diocese of Lucknow, C.N.I. was pending. Another Writ Petition No. 68521 of 2009 was disposed of on 16.12.2009 without issuing any notice to the Respondents. The Division Bench on 23.2.2010 set aside the order passed by the learned single Judge as it was of the opinion that though the order of the learned single Judge was an innocuous order but since it was passed without hearing the Respondents it was illegal.

18. One of the ground for challenge before the learned single Judge as well as in this appeal is that the order passed by the learned single Judge in Writ Petition No. 68521 of 2009 dated 16.12.2009 directing the Assistant Registrar to decide the objections dated 9.10.2009 and 11.12.2009 filed by Mr. Vinod B. Lal had been set aside by the Division Bench which had rendered the notices dated 2.2.2010 and 11.2.2010 illegal, as it was mentioned in the notice that it was being issued in accordance with the direction dated 16.12.2009 issued in Writ Petition No. 68521 of 2009.

19. We find that the notices were issued by the Assistant Registrar on 2.2.2010 and 11.2.2010 in compliance of order dated 16.12.2009 passed by the learned single Judge in Writ Petition No. 68521 of 2009. The Appellants did not inform the Division Bench on 23.2.2010 that the order passed by the learned single Judge dated 16.12.2009 had been acted upon and notices had been issued. Even if the Appellants had informed the Division Bench about the notice, the subsequent order of the Division Bench dated 23.2.2010 could not nullify the notices issued by the Assistant Registrar nor the Division Bench had held the notices issued by the Assistant Registrar were illegal.

20. Even if the Assistant Registrar had written in the notice that he was issuing notice in compliance of the order dated 16.12.2009 passed in Writ Petition No. 68521 of 2009 that will not make the notice invalid as the order passed by the learned single Judge had been acted upon. It appears that the special appeal before the Division Bench became infructuous. The order passed by the Division Bench on 23.2.2010 was a futile order.

21. Moreover, once the Assistant Registrar receives a complaint about change in the basic structure of the Society, the Assistant Registrar was under a legal duty to act promptly and call for an explanation. A party cannot complain to the Court that the Assistant Registrar should proceed slowly and delay the matter. The Assistant Registrar had jurisdiction to issue notices on the complaints made by Rt. Rev. Morris

E. Dan and Mr. Vinod B. Lal.

Whether the Governing Body was constituted in accordance with Rule and elections of the Officers of the Society had taken place:

22. Since 1988 Mr. C.V. Innis was working as Principal of B.H.S. The Bishop of Lucknow Diocese, C.N.I. was the Chairman, members and ex-officio members constituted the Governing Body of the Society. The Annual General Meeting of the Society was held on 28.2.2003. Rt. Rev. A.R. Stephen was elected as Chairman, Dr. S.D. Chand, Secretary Diocesan Education Board was elected as Vice-Chairman, Mr. C.V. Innis as Secretary and Mrs. P. David as Treasurer. The term of the officers and Governing Body elected on 28.2.2003 was till the next Annual General Meeting of the Society. The next Annual General Meetings of the Society or the elections/nominations of officers were not held till 28.5.2007. The proceedings of the meetings held on 27.11.2004, 28.11.2005 and 23.11.2006 disclose that these meetings were not Annual General Meetings. There was no Agenda for holding the elections/nominations of officers of the Society nor any agenda was there for filling casual vacancy of members. After 28.2.2003 no election of the officers or governing body of the Society was held till 28.5.2007.

23. In the meeting which took place on 27.11.2004 at the Bishop House, three officers, one ex-officio member and six ordinary members of the Society were present. One ex-officio member and four ordinary members were absent. In the meeting Col. John Taylor (Retd.) was nominated as recording secretary of the meeting. Under "Any Other Business'', Mr. C.V. Innis highlighted the need for amendment of the Memorandum of Association and Articles of Association. A decision was taken appointing Mr. C.V. Innis and Col. John Taylor (Retd.) a two member sub-committee to consider necessary changes/amendments in the Constitution of the Society. The Governing Body consisted of only 10 ordinary members which was less than minimum 12 members fixed by Rule 11. Only three officers of the Society were present which was short by one officer and only one ex-officio member was present which was short by two. It is relevant to point out over here that Rule 19 provides for holding of the Annual General Meeting of the Society once in every year and the officers and governing body were to be elected in the Annual General Meeting as per Rule 20. In the meeting held on 27.11.2004 no election of officers of the Society as laid down by Rule 8 took place nor the casual vacancies of members as provided by Rule 14 were filled.

24. Another meeting of the Society took place at the Bishop House on 28.11.2005. In the meeting three office bearers, two ex-officio members and eight ordinary members were present. Two ordinary members were absent. The Governing Body was not constituted according to Rule 11. The two member sub-committee on 10.9.2005 submitted a report to the Chairman. The report was accepted and six members amendment committee was constituted, namely, Mr. C.V. Innis, Col. John Taylor (Retd.), Rev. G. Daud, Mrs. D. Innis, Mrs. P. David, Ms. P. Singh and Dr. L.R.

Anthony. It was to submit its report and draft of the amended Constitution and Rules in the next meeting. In this meeting also no election of officers of the Society took place nor the casual vacancies of members were filled. It is relevant to point out over here that in the meeting on 28.11.2005 under "Any Other Business'', M.L.S. was adopted by the Society which had been minuted in the Diocesan Education Boards minutes of 1989.

25. The amendment committee meeting was held on 25.9.2006 and recommendation for amending Rules/Constitution/Bye-laws was made.

26. The next meeting of the Society was held on 23.11.2006. A resolution was passed for calling a Special General Meeting for amending Rules/Constitution/Bye-laws. In this meeting also there was no agenda for holding the election of officers or the Governing Body of the Society. No casual vacancies were filled. In this meeting the draft amendments were directed to be prepared. This meeting was not constituted according to the Rule 11.

Special General Meeting held on 28.5.2007 for considering the amendments

27. On 9.5.2007, the Secretary issued notice fixing 28.5.2007 for holding the Special General Meeting of the Society. The meeting took place on 28.5.2007. So far as service of the notice for this meeting is concerned It is alleged that those members who were in the group of Mr. C.V. Innis were served by peon as mentioned in the peon book. The notices to the ex-officio members and ordinary members who were not in good books of Mr. C.V. Innis was sent under postal certificate. Such members were the Commissioner of Allahabad, District Magistrate Allahabad, Dr. S.D. Chand, Dr. L.R. Anthony, Dr. P. Singh and V. Esubius though all these members were at Allahabad. The affidavits filed before the Assistant Registrar dated 20.2.2010 by Miss. L. Anthony, V. Esubius, S.D. Chand. R.K. Gowan, Miss P. Singh have been brought on record. They have clearly stated that they had not received any notice of the Special General Meeting scheduled to be held on 28.5.2007.

In the Special General Meeting held on 28.5.2007, four officers of the Society were shown to be present. Col. John Taylor (Retd.) was nominated as recording secretary of the meeting held on 27.11.2004. In the meeting held on 28.11.2005 he was shown as an ordinary member. In the Special General Meeting of the Society which took place on 28.5.2007 he was shown as Vice-Chairman of the Society. When he was elected/ nominated as Vice-Chairman is not on record. The proceedings and minutes of the meetings dated 27.11.2004, 28.11.2005 and 23.11.2006 make it clear that no elections of officers of the Society took place as there was no agenda. Col. John Taylor (Retd.) who was shown as Vice-Chairman of the Society in the meeting of 28.5.2007 was never elected prior to the amendments on 28.5.2007 but he was illegally shown as Vice-Chairman of the Society.

In the Special General Meeting dated 28.5.2007 four officers of the Society as alleged by the Appellant were present. Five ordinary members were present. Total

nine members of the Society were present and one ex-officio member and four ordinary members were shown to be absent. According to Rule 11, officers of Society (four), 12 ordinary members and three ex-officio members total 19 members were to constitute a valid governing body. The constitution of governing body and the Special General Meeting dated 28.5.2007 appears to be contrary to Rule 11.

28. The argument of Shri Ashok Khare that the quorum as provided by Rule 24 would apply and since one third of the members of the Governing Body of the Society were present in the Special General Meeting, it would be a valid meeting as out of total fourteen members, nine members were present, which was one third of the total members and the quorum was complete and the Special General Meeting could not be treated to have been dissolved or illegal, and the resolution passed therein for amendments were valid.

29. We have already seen that in accordance with Rule 11 the Governing Body of the Society should consist of at least nineteen members, namely, four officers of the Society, minimum twelve members and three ex-officio members. Thus, the Special General Meeting convened by the Appellants appears to be in violation of Rule 11.

30. There is yet another aspect of the matter. Rule 19 provides for Annual General Meeting. Rule 21 provides for extraordinary general meetings and Rule 24 provides the quorum at the general meetings. If an Annual General Meeting or extraordinary general meeting is held then Rule 24 may come into play and one third of the members of the Society may constitute the quorum. But Rule 24 which provides quorum for the aforesaid meetings would not be applicable to the Special General Meeting which is required to be held under Rule 38. The reason appears to be that Rule 38 provides for amendments, alterations and revision of the Rules, only at a meeting of the Society specially called for the purpose and the amendments have to be approved by at least three quarters of the members of the Society present at such a meeting. It is also relevant to mention over here that for other meetings quorum of one third members of the Society had been provided whereas for Special General Meeting Rule 38 provides that three quarters members of the Society have to be present at the meeting. Therefore, the argument of learned Counsel for the Appellants that quorum provided by Rule 24 would be applicable is devoid of any merits. The quorum of the Special General Meeting is provided itself by Rule 38. Rule 38 being a special provision, the general provision of quorum provided by Rule 24 would not be applicable to Special General Meeting under Rule 38.

31. In the Special General Meeting of the Society for amending the Rules, Constitution and Bye-laws as per Rule

38, three quarters of 19 members of the Society were required to be present at the meeting for amending or altering the Rules, Bye-laws and Constitution of the Society. Three quarter of 19 would be at least 14 members. Whereas in the Special General Meeting of the Society held on 28.5.2007 under Rule 38 for amendments,

only 9 members were present, which was much below the required strength laid down by Rule 38. Therefore, Special General Meeting held on 28.5.2007 for the amendments or alterations made in the Rules, Bye-laws and Constitution of the Society appears to be contrary to Rule 38.

The counsel for the Appellants has strenuously urged that after leaving aside the absentee members, out of the total members who were present at the Special General Meeting on 28.5.2007, three quarter members present at such meeting could amend or alter the Rules. It is necessary for us to find out the meaning of the expression "at least three quarter members of the society present at such a meeting." A plain reading of the expression means that for effecting amendment or alteration of the Rule at least three quarter members of the Society must be present in the Special General Meeting convened for amending or altering of the Rules. For example, if there are 20 members in the society then 15 members should be present in the special general meeting for amending the rules, bye-laws and constitution of the society.

32. We have earlier mentioned that four officers and five members of the Society were present in the meeting. One ex officio member and four members were absent. This leads to the conclusion that there were total 14 (fourteen) members of the Society. In the Special General Meeting on 28.5.2007 only 9 (nine) members were present. Three quarter member of 14 members would be 10.5 (ten and a half) members. Therefore, according to Rule 38 at least 10 members were required to be present at the Special General Meeting held on 28.5.2007. In absence of quorum laid down by Rule 38, neither the amendments could be passed in the Special General Meeting of the Society on 28.5.2007 nor the amendments made on 28.5.2007 could be registered by the Assistant Registrar.

Whether under the Rules the Principal B.H.S. and Secretary of the Society can be one and the same person:

33. The interesting question which has been urged by Shri Shailendra the learned Counsel for the Respondents is whether Mr. C.V. Innis could hold dual post of Secretary of Society as well as Principal of the B.H.S. and become the employer and employee himself contrary to rule of Master and Servant. The Bye-laws of the Society were framed in the year 1953. Bye-law No. 7 provided that Headmaster/ Headmistress (Principal) shall be the Honorary Secretary of the managing committee of the B.H.S. and G.H.S. The bye-law No. 7 of the bye-laws of 1953 was amended and deleted. The Honorary Secretary of the managing committee of B.H.S. is the Principal, a subordinate body. Whether he could become the Honorary Secretary of the Society, the apex body or whether the Principal of B.H.S. could be nominated/elected as Secretary of the society under the Rules 1952 is doubtful.

Whether Mr. C.V. Innis retired in September, 2008 and his service has not been extended as Principal B.H.S.

34. Mr. Cedric Valentine Innis, was born on 18.9.1948. He is a C.N.I. CHRISTIAN (Anglo-Indian). He was appointed as Principal of the B.H.S. on 12.1.1988 by the Chairman of the Society/The Bishop of Lucknow, Diocese of Lucknow, C.N.I. He took charge on 15.3.1988. He was confirmed after one year w.e.f. 15.3.1989. At the time of his appointment as Principal the age of superannuation of Principal B.H.S. had already been enhanced from 58 years to 60 years. The age of superannuation was enhanced on the recommendation of Diocesan Education Board which had resolved on 10.1.1985 to fix the retirement age of the Principals of the English medium Schools, governed by the Anglo-Indian Education Code, of the Diocese of Lucknow to sixty years. The proviso permitted yearly extensions up to a maximum of five years. The Society in the Governing Body meeting held on 12.12.1985 accepted and adopted the Diocesan Education Board Resolution dated 10.1.1985.

35. The predecessor of Mr. C.V. Innis, retired at the age of 60 years. The age of superannuation of the teaching staff was enhanced in the meeting dated 23.11.2006 from 58 years to 62 years. In the proceedings of the meeting dated 23.11.2006 it had not been mentioned as to whether the meeting was a Governing Body meeting or an Annual General Meeting. There was no agenda for enhancing the age of superannuation. The proceedings of the meeting dated 23.11.2006 filed as Annexure-SRA-II at page 70 is a forged document as it mentions enhancement in age of superannuation of management staff and non-teaching staff whereas in the original proceedings of 23.11.2006 produced by the counsel for the Appellant only the age of superannuation of the teaching staff had been enhanced. A question arises that what was the need for forgery for enhancing the age of superannuation. The answer appears to be simple. The Appellants wanted to hide under the carpet that Principal''s age of superannuation had already been enhanced by the Society on 12.12.1985 and they wanted to hide the control of Diocese of Lucknow.

36. From the aforesaid discussion it appears that the meeting dated 23.11.2006 was illegal being in violation of Rule 11 and in such a meeting age of superannuation could not be enhanced. The enhancement made in the meeting dated 23.11.2006 would not confer any right on Mr. C.V. Innis the Principal of B.H.S. His age of superannuation was 60 years and there being no material on record about any extension of service granted to him, it appears that he retired from the post of Principal of B.H.S. in September, 2008.

Whether the Assistant Registrar had jurisdiction and power to issue notices u/s 12D (b) to Mr. C.V. Innis, Secretary of the Society

37. In view of arguments of learned Counsel for the parties we propose to examine as to whether the amendments made in the Constitution, Rules and Bye-laws of the Society were such that the activities of Society became subversive of the objects of the Society.

38. Section 12D gives power to the Registrar to cancel the registration of the society and pass a written order cancelling the registration of any society on the grounds that its activities or proposed activities have been, or are, or will be subversive of the object of the society or opposed to public policy.

39. The question is that whether the members of the Society under the garb of amendments can change the basic objects and fundamental principles on which the Association was founded or the Society was formed and registered. Learned Counsel for the Respondent Shri Shailendra has argued that the Appellants have amended the Constitution of the Society which amounts to altering and amending the objects of the Society. He urged that the Constitution is the part of Memorandum and gives in detail the objects of the Society. Section 2 of the Act provides that the Memorandum of Association shall contain the name of the Society and the objects of the Society. It further provides the names, addresses and occupations of the governors, councils, directors, committee or other governing body to whom by the rules of the society the management of its affairs is entrusted. It also lays down that the copy of the Rules and Regulations of the society shall be filed with the Memorandum of Association by not less than three members of the governing body.

40. We do not find that the word ''Constitution'' of the Society had been mentioned in Section 2. The Constitution which lays down the objects of the Society cannot be said or treated to be part of the Rules nor the Constitution can be treated to be part of the Regulations. The Constitution can only be treated as part of the Memorandum of Association. We have extracted the relevant part of the Constitution earlier which demonstrates that it lays down the objects of the Society to advance the cause of Christian education, according to the teaching of the Church of England as by law established. It also provided that the Society shall consist of Bishop of Lucknow and other members not exceeding 23. Three of the members shall be Senior Chaplain for the time being of the Church of England at Allahabad. Commissioner and Collector of Allahabad shall be the members. The school shall be conducted in accordance with the principles of Church of England and shall be regulated in accordance with the doctrine of Church of England. The Constitution further mentioned that the school shall be subject to inspection of the Government and of the Diocesan Council. Therefore, prima facie it appears that the Constitution is the part of Memorandum of Association.

41. We may now consider the question whether the activities of Society became subversive of the objects of the Society. It is necessary to understand the meaning of the word ''subversive''. According to Black''s Law Dictionary, Ninth Edition the expression ''subversion'' means the process of overthrowing, destroying or corrupting. The expression ''subversive activity'' means a pattern of acts designed to overthrow a Government by force or other illegal means.

According to Webster''s Third New International Dictionary the expression ''subversive'' means a person engaged in subversive activities or planning or attempting to subvert, overturn, overthrow, ruin utterly, raze, legally constituted authority specially by the employment of unconstitutional means.

42. The perusal of the amended Rules, Bye-laws and the Constitution demonstrates that wherever C.N.I. or Diocese of Lucknow or Bishop of Lucknow were mentioned either in the Rules or the Constitution had been deleted with a purpose to take away the institutions beyond the control and supervision of the C.N.I. Diocese of Lucknow and Bishop of Lucknow. The basic structure of the Society had been changed and the basic object for which the Society had been founded in the year 1861 and 1952 had been razed to ground and wiped out under the garb of amendment. All the opportunity of Christian teaching and practices of Church of India, Pakistan, Burma and Ceylon had been destroyed completely by overturning the table on the Diocese of Lucknow and C.N.I.

43. The main change in the objects of the Society as mentioned in the Memorandum 1952 were that if need arises new schools or colleges in Allahabad be opened to provide Christian basis education and to provide Christian education and opportunities for teaching etc. as per the practice of Church of India, Pakistan, Burma and Ceylon. These objects of the Society cannot be carried out or achieved in absence of Rules, Constitution and Bye-laws. In the Rules and the Constitution wherever there was any mention of Church of India, Bishop of Lucknow or Diocese of Lucknow had been omitted or modified. Rule 18 which provided overriding powers to the Bishop of Lucknow to declare any resolution of the Governing Body of the Society invalid and the resolutions which contravenes the Constitution, Canons or Rules of Church of India had been deleted. Rule 17 (c) was for promoting the objects of the Society had been deleted. Rule 17 (g) which gave power to the Governing Body to appoint Principal and assistant teacher of the school or college conducted by the Society who were communicant member of the Church of India was altered and the expression, "who is communicant member of the Church of India'' had been deleted. Rule 17 (i) gave power to the Governing Body to appoint a priest of the Church of India and duly licensed by the Bishop of Lucknow, as School Chaplain, had been deleted. These facts establish beyond doubt that the objects of the Society cannot be achieved in absence of Rules, Constitution and Bye-laws. Therefore, we are of the prima facie opinion that due to amendment in Rules, Constitution and Bye-laws of the Society, the objects of the Society had become otiose and the ex-officio members and Bishop of Lucknow, Diocese of Lucknow have been thrown out of the Society by illegal means.

44. There is yet another aspect of the matter which is required to be considered. Rule 38 which empowers the members of the Society to make amendment, alteration or revision of the rules do not empower the Society to change the basic structure or fundamental principles or objects on which the Association or the

Society had been formed. Even the majority of a body cannot alter the basic structure or fundamental principles of the body upon which the Association is founded unless such a power is specially reserved or provided for in the Rules. The Memorandum of Association and the Rules of the Society gave the members of the Society, the power to frame Rules or Bye-laws, or to amend it which were not inconsistent with the objects of the Society, as it was considered necessary for conducting the affairs of the Society according to the needs of the changing times. It was thought that the Society must have a power to alter, amend or revise any such Rule to advance the objects of the Society, but the power of amendment was to be exercised by at least three quarter members of the Society who were required to be present at the Special General Meeting for amendment. The control of Bishop of Lucknow or C.N.I. could not be destroyed or pattern of acts of the Appellants must not be designed to overthrow the Diocese of Lucknow by illegal means nor the planning should be designed in such a manner to overthrow Diocese of Lucknow out of power which was vested in them right from the inception of the Society. Their deletion by amendment from the Society amounted to cutting the roots of the tree. The illegally constituted Special General Meeting dated 28.5.2007 had altered drastically the Rules, Constitution and Bye-laws to defeat the objects of the Society in such a manner that the Appellants had ensured that the Society and its properties becomes their personal property and Diocese of Lucknow and C.N.I. were thrown out of the Society permanently.

45. On the facts of this case we are of the considered opinion that the notices issued by the Assistant Registrar u/s 12D (b) of the Act does not suffer from any illegality or infirmity. We also do not find any illegality in order passed by the learned single judge.

Whether the Assistant Registrar could approve, disapprove or adjudicate about the validity of any amendment to the Rules, Bye-laws and the Constitution of the Society

46. The next argument of Mr. Khare is that under the Act, no power is vested in the Assistant Registrar either to approve, disapprove or to adjudicate the validity or otherwise of any amendment to the Rules, Bye-laws and the Constitution of the Society. From a perusal of Section 12D Clauses (a) (b) and (c), as applicable in State of Uttar Pradesh, it appears that the Assistant Registrar has power to cancel the registration of the Society by a written order if he is satisfied that the Rules, the Constitution and the Bye-laws of the Society had been illegally amended or the registration or the renewal of the Society had been obtained by misrepresentation or fraud. A Division Bench in Siksha Samiti Degree College, Garua Maksudpur and others Vs. Registrar, Firms, Societies and Chits, U.P. Lucknow, has held as follows:

...If an amendment or amendments are made in the Bye-laws, they have to be incorporated in the Register u/s 4A of the Act. The Registrar at that time is entitled not only to find as to whether the meeting which made the amendment had taken place or not, but also to consider and apply his mind to the controversy if it arises

before him whether the amendment is contrary to the provisions of the Act and the Rules. It has further to be seen that the amendment is not such which destroys the very purpose of the society for which it was incorporated. Furthermore, the Registrar u/s 12D of the Act could cancel the registration of any society in the circumstances enumerated in Sub-section (1) of the said section. These circumstances have been mentioned in Clauses (a) to (c) of Sub-section (1) of Section 12D. This power could be exercised also in respect of the amendment, which has been procured and got incorporated if a case falls under Clauses (a) to (c). In the instant cases the Registrar found that the amendment was illegal and the same ran contrary to Clause (b) of Sub-section (1) of Section 12D. In our opinion the Registrar had the power to do so and it is not correct that only an application u/s 12D is made, the Registrar should simply find out the fact of passing the resolution by the Committee of Management and nothing more or nothing less if power is curtailed to the extent indicated by the counsel for the Petitioner, the object of making amendment be bye-passed.

47. The decision of the Apex Court in Managing Committee, Khalsa Middle School and Anr. v. Mohinder Kaur (Smt.) and Anr. 1994 SCC (L&S) 24, would not be applicable to the facts of the instant case as the Apex Court was considering the provisions of the Act applicable in State of Delhi. In Uttar Pradesh Section 4A of the Act applies whereas there is no similar provision in the State of Delhi. Therefore, it appears that the decision of the Apex Court would not be applicable to the facts of the case.

48. After Section 4 of the Act a new Section 4A has been inserted by U.P. amendment in the Act which is reproduced below:

Section 4A. Changes etc. in rules to be intimated to Registrar.--A copy of every change 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.

49. Section 4 lays down that every change made in the rules of the Society has to be intimated by the Governing Body to the Assistant Registrar within 30 days of the change. Therefore, the Appellants were under a legal duty to send the amendment to the Assistant Registrar.

50. The Appellants'' Society was a unregistered Society on 28.5.2007 when the amendments were passed. Mr. C.V. Innis, the Secretary of the Society had himself written a letter dated 29.5.2007, Annexure-6 to the writ petition, to the Assistant Registrar for registering the amendments which was supported by the affidavit of Mr. C.V. Innis. The affidavit has been filed as Annexure-CA-6 to the counter-affidavit filed by Respondent No. 5 which demonstrates that it was sworn on 30.5.2007 by the Notary. How an application dated 29.5.2007 alongwith the affidavit of Mr. C.V. Innis could have been filed before the Assistant Registrar on 29.5.2007, when the affidavit

was sworn by the Notary on 30.5.2007.

Whether a High Powered Committee is to be appointed

51. There is yet another aspect of the matter. It had been urged by Shri Shailendra the learned Counsel for the Respondents that the institutions and its properties be protected by this Court from going into the hands of Mr. C.V. Innis and persons connected with him. The facts of the case reveals that Mr. C.V. Innis was due to retire in September, 2008. Mr. C.V. Innis is a nominated Member of Legislative Council, Uttar Pradesh. Due to huge movable and immovable properties of the four institutions and his retirement approaching fast in September 2008, the year in which he was to attain the age of 60 years, greed for money and power prevailed on him and in order to fulfil his illegal design, he in connivance with A.R. Stephen, the then Bishop of Lucknow Diocese who was also due to retire on 5.6.2009 decided to acquire and takeover the Society, the four institutions and its properties.

52. The facts of this case demonstrate that in order to give shape to his illegal ambition Mr. C.V. Innis alongwith Rt. Rev. A.R. Stephen, the then Bishop of Lucknow and with the help of his wife and son and some of his trusted persons initiated the process to amend the Memorandum, 1952 of the Society in the year 2004. The Rules, Constitution and Bye-laws were drastically amended and altered to oust the Bishop of Lucknow Diocese and the C.N.I. Mr. C.V. Innis also ousted the high powered ex-officio members, deleted the other three types of membership to make all the four institutions, its properties and the Society his personal property. How the goal of capturing the four institutions were achieved finally in the year 2007 had earlier been demonstrated. We have also demonstrated that the four institutions were under the control of Diocese of Lucknow. The institutions B.H.S. and G.H.S. were established about 150 years back. Large number of Principals came to the institution, served and thereafter retired. But no one thought of taking over the institutions. The facts of this case reveals that how a scheming Principal of a prestigious minority Christian institution, could takeover four minority Christian institutions, its properties and the Society which manages it, by overthrowing the Diocese of Lucknow, thus, converting the four institutions, almost into his own personal property with the help and connivance of the then Bishop of Lucknow Diocese and handful persons. The seeds were sown in the year 2004 and harvesting was done on 28.5.2007.

53. We are conscious of the fact that our jurisdiction in this appeal is limited to the questions involved in this appeal. But how the institutions and their properties be protected from going into the hands of manoeuvring persons is the question with which we are faced. Whether this Court can go beyond the scope of the writ petition and special appeal to do justice and protect the four minority Christian institutions from going into private hand of a schemester or persons who have fraudulently takenover the institutions its properties and the Society or the Court is required to shut its eyes and leave the fraudulent persons to reap the fruits of their fraud till the

litigation finally comes to an end after sufficient lapse of time.

54. In our opinion, the test is not whether this Court had ever exercised such a jurisdiction, but whether this Court is capable of exercising such a jurisdiction. Law develops by pragmatic approach to the problems arising under an Act and not by abdication or surrender. It is well known that to meet extraordinary situation the Court should find out new tools to dispense justice. The fact situation of this case demands that a High Powered Committee be appointed to manage the affairs of B.H.S. G.H.S. H.T.S. and M.L.S. during the period the dispute is not decided by the Assistant Registrar. We are conscious of the fact that the High Courts do not possess any power similar to Article 142 of the Constitution of India, possessed by the Apex Court. We are in a dilemma that what should we do. Whether we should appoint a High Powered Committee to lookafter the management of the institutions and the Society while the dispute is not decided by the Assistant Registrar and appoint a High Powered Committee which would consist of a Retired Chief Justice of High Court who is settled at Allahabad to be the Chairman of the High Powered Committee. The other members being the District Magistrate, Allahabad or his nominee not below the rank of Additional District Magistrate, the Income Tax Commissioner, Allahabad or his nominee not below the rank of Additional Commissioner of Income Tax, the Priest in Charge of All Saints'' Cathedral, Allahabad ; the Registrar General of Allahabad High Court or his nominee not below the rank of H.J.S. cadre. It shall be open to the High Powered Committee to co-opt other members for looking after the day-to-day management of the institutions, However, we have persuaded ourselves not to travel beyond the limits laid down by the Apex Court and confine ourselves to the questions involved in the special appeal and the arguments raised by the learned Counsels for the parties.

Conclusion

55. This special appeal is dismissed with an observation that any discussions or observations made by us, has been made for considering the arguments of learned Counsel for the parties, and they shall not be binding on the Assistant Registrar and he may decide the complaints expeditiously by applying his own independent mind to the complaints pending before him.

Parties shall bear there own costs.