

himself. In **P.M.A. Metropolitan's case** (supra), the Apex Court examined the various Articles in the 1934 constitution of the Malankara Church and ordered amendment to some of the Articles therein to resolve the factional dispute in the Malankara Church. Paragraph 103 of the said judgment indicates that the Apex Court had taken note of the provision contained in Article 101 of the constitution, which prior to the amendment pursuant to the directions issued in the said case was Article 92. A close reading of the judgment of the Apex Court indicates that the Apex Court had approved the said Article of the constitution, which is evident from paragraph 135(b) of the judgment dealing with the manner in which the Patriarch has to exercise his powers after the 1934 constitution. The relevant portion of the said paragraph reads thus:

"It may be that by this act of revival of Catholicate and the Kalpanas A. 13 and 14, the Patriarch is not denuded of the powers delegated by him to the Catholicos- assuming that these powers were not already possessed by the Catholicos and that they came to be conferred upon him only under A.13 and A.14 - yet, reasonably speaking, the Patriarch was, and is, expected to exercise those powers there after in consultation with the Catholicos and the Malankara Sabha (Association) - and, of course, in accordance with the 1934 Constitution. This was

necessary for the reasons (i) to avoid creating parallel authorities leading to conflict and confusion and (ii) the acceptance by the local people was asine qua non for any Metropolitan or melpattakar in Malankara Church as provided in the Mulanthuruthy Synod (convened and presided over by the then Patriarch himself) and given a judicial sanction by the judgment of the Travancore Royal Court of Appeal aforementioned."

The fact that the Apex Court had approved Article 101 of the 1934 constitution is further evident from the conclusion arrived at by the Apex Court as contained in paragraph 142 (3) of the said judgment, which reads thus:

"142(3) It may be that by conferring upon the Catholicos the powers of ordaining Metropolitans, consecrating Morone and to exercise other spiritual powers over Malankara Church, the Patriarch may not have denuded himself completely of the said powers which he enjoyed until then. But in view of the fact that he had himself created another center of power in India with the aforesaid powers, it would be reasonable to hold that thereafter the Patriarch cannot exercise those powers unilaterally, i.e., without reference to the Catholicos. He can exercise those powers only in consultation with the Catholicos. Moreover, the person to be appointed as Metropolitan or Malankara Metropolitan has to be accepted by the people as has been affirmed in the judgment in Seminary suit. The Patriarch's power to ordain the Metropolitans now is subject to the Constitution of 1934."

In the light of the findings recorded by the Apex Court in the said case as referred to above, it cannot be contended that the conclusion arrived at by the Apex Court in paragraph 142(4) of the judgment is unmindful of the fact that the Malankara Church would recognise only the Patriarch canonically consecrated with the co-operation of

the catholicos. As such, I have no hesitation to hold that the Patriarch of Antioch referred to in paragraph 142(4) of the judgment of the Apex Court is a Patriarch holding office in accordance with Article 101 of the 1934 constitution of the Malankara Church.

12. Now, I shall deal with the contentions raised by the learned counsel for the contesting respondents as regards the faith of the church. As noticed above, the contention is that the supremacy of the Patriarch of Antioch is one of the articles of faith of the church and that in so far as the parishioners who owe allegiance to the orthodox faction do not recognise the Patriarch of Antioch as the superior spiritual head, grant of reliefs to them would alter the faith of the church. Article 1 of the 1934 constitution of the Malankara Church categorically proclaims that the Malankara Church is a division of the orthodox syrian church and the primate of the orthodox syrian church is the Patriarch of Antioch. In the light of the said provision in the

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1934 constitution of the church, it cannot be contended that there is any deviation in the articles of faith of the church. The fact that there are two factions among the parishioners of the first defendant church as found by the trial court and that the plaintiffs are persons who owe allegiance to the orthodox faction are not in dispute. Merely for the reason that the contesting respondents recognises the Patriarch of Antioch holding office otherwise than in accordance with the 1934 constitution, it cannot be contended that if reliefs are granted to the plaintiffs as claimed by them, the same would result in altering the articles of faith of the church.

13. As regards the contention advanced by the learned counsel for the contesting respondents, relying on paragraph 141 of the judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra), that the Apex Court has not held that the parish churches are to be governed by the 1934 constitution, it is seen that identical contention has been dealt with by a Division Bench of this Court in **Mathew**

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Yohannan v. Varghese (2013(4) KLT 945) in the context of the disputes relating to the administration of another parish church under the Malankara Church namely, St.Peter's and St.Paul's Syrian Orthodox Church, Kolencherry. The relevant portion of paragraph 141 of the judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra) read thus:

— “We are, however, of the opinion that in this suit no declaration can be granted affecting the rights of Parish Churches in their absence nor can it be declared that the properties held by Malankara Parish Churches vest in the Catholicos or the Malankara Metropolitan or the Metropolitan of the concerned diocese, as the case may be. Indeed, no such specific relief has been asked for in the suit and without impleading the affected parties, no declaration can be claimed by the plaintiffs that their Church is episcopal in nature, if that declaration means that it gives the Catholicos/Malankara Metropolitan/the Metropolitan of the Diocese any title to or any control over the properties held by the Parish Churches. We have pointed out herein before that the only place in the plaint where a reference is made to the properties of the Parish Churches is in Para 24 where all that it is alleged is that the defendants and their partisans are trying to intermeddle in the affairs of individual Churches and are attempting to make use of the properties of the Church to further their illegal and unlawful objects. No list of Parish properties is enclosed nor are the particulars of the alleged intermeddling mentioned in the plaint. In the state of such a pleading, the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the

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affairs of the Parish Churches too, insofar as the said Constitution provides for the same."

After referring to the judgment of the Apex Court in **P.M.A. Metropolitan's case** (supra), the Division Bench held that the Parish Churches are constituent units of the Malankara Church and that the 1934 Constitution is valid and binding on the Parish Churches and the Parishioners. It was also held by this Court in the said case that the clarification made by the Apex Court in paragraph 141 relied on by the learned counsel that no declaration can be granted affecting the rights of the Parish Churches in their absence is in the context of considering the question whether properties held by the Parish Churches would vest in the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be, and not in the context of the status of the Parish Churches. The relevant passages dealing with the said aspects read thus:

"The above conclusions will show that Parish Churches are constituent units of the Malankara Church; they have fair degree of autonomy subject to the supervisory powers vesting the Managing Committee of the Malankara Association and the 1934 Constitution is valid and binding on the Malankara Association, Community, Dioceses as well as Parish Churches and Parishioners.



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The clarification made by the Apex Court in para 141 that no declaration can be granted affecting the rights of Parish Churches, in their absence, is in the context of consideration of a question whether the properties held by the Malankara Parish Churches vest in the Catholicos/the Malankara Metropolitan/the Metropolitan of the concerned diocese, as the case may be. Therefore, the same is in the context of vesting of title of the properties of Parish Churches and not the status. Finally, in the said paragraph, their Lordships held that "the only observation that can be made herein is that the 1934 Constitution shall govern and regulate the affairs of the Parish Churches too, insofar as the said Constitution provides for the same. In that view of the matter, according to us, the argument of the learned Senior Counsel for the appellants that the decision of the Apex Court in P.M.A. Metropolitan's case (supra) has been wrongly relied upon by the Trial Court, is not correct."

As in the instant case, the said case was also a case where no relief was sought in respect of the properties of the Parish Church. Instead, the parties were at issue only on the question as to the administration of the Parish Churches and the application of the 1934 Constitution of the Church. Paragraph 89 of the said judgment reads thus:

"In this case also, in the plaint no relief is sought that the properties of the Church vest in the Parishioners or other bodies. Both sides were at issue on the question of system of administration of Parish, election and on the question whether it is Ext.A1

Udambady or Ext.B1 Constitution that governs the Church. Therefore, it is not a case where the plaintiffs have sought for a relief of declaration specifically with regard to the properties of the Church or about the vesting of the properties of the Church in a particular body. What is clear from the reliefs sought for, is that they are only seeking for enforcement of Ext.A1 Udambady as regards the administration of the Church or in the alternative, to frame a scheme for the administration. In that view of the matter, according to us, there is no error committed by the trial court, by relying upon 1934 Constitution and the finding relying upon the decision of the Apex Court in P.M.A. Metropolitan's case (supra)."

In the light of the said decision of the Division Bench, the contention of the appellants that the decision of the Apex Court in **P.M.A. Metropolitan's case** (supra) has no application to the Parish Churches under the Malankara Church is only to be rejected.

14. As noticed above, the essence of the contentions of the learned counsel for the contesting respondents is that in so far as the parishioners of the first defendant church are persons who owe allegiance to the Patriarch faction and since the plaintiffs are not recognising and accepting the present incumbent in the office of the Patriarch of Antioch, the parishioners should be permitted to

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administer the affairs of the first defendant church in accordance with their faith. First of all, there is nothing on record as to the strength of the parishioners who owe allegiance to the Patriarch faction like the contesting respondents. Even otherwise, in so far as the first defendant church is a parish church of the Malankara orthodox syrian church, the Apex Court held that the Parishioners have no right to disassociate from the Malankara Church. The relevant extract of the judgment in

P.M.A. Metropolitan's case (supra) reads thus:

"Therefore, once these public charities were found whether before the establishment of catholicate or after it their nature could not change. On the material on record the courts have found them to be so. Therefore, the submission that they are autonomous does not appear to be well founded. Autonomy for what, religious worship or temporal matters. Former cannot be pleaded as once a Church was found for religious worship it continued to be so. The autonomy in temporal matters as claimed appears to be two-fold one, freedom to disassociate from Malankara Association and second to control and supervise its internal affairs. The first cannot arise. In law it is not open to members of public or public trust to appropriate trust property for themselves. Under Hill on the Law of Trusts and Trustees has explained it thus, 'However, the crucial difference surely is that no absolutely entitled members exist if the gift is on trust for future and existing members, always being for the members of the association for the time being. The members for the time being cannot under the association rules appropriate trust property for themselves for there would then be no property held on trust as intended by the testator for those persons who some years later happened to be the members of the association for the time being'. None of the Parish Churches claim autonomy in the sense that they have changed their faith and belief. Each of them claims that their spiritual head is Patriarch of Antioch. That is they are the believers and followers of Syrian Church. So are the members of Malankara Association and Catholicate of East. Therefore, the existence or

