

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK**

WP(C) NO. 17429 OF 2025,
WP(C) NO. 43137 OF 2023,
WP(C) NO. 708 OF 2024,
WP(C) NO. 1785 OF 2024,
WP(C) NO. 17936 OF 2025,
AND
WP(C) NO. 19436 OF 2025

In the matter of applications under Articles 226 & 227 of the Constitution of India.

In WP(C) NO. 17429 OF 2025**Md. Usman Khan****..... Petitioner****-Versus-****State of Odisha & Ors.****..... Opp. Parties****Advocate(s) appeared in this case:-**

For Petitioner : M/s. R.C. Jena & M.Padhi, Advocates

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate

In WP(C) NO. 43137 OF 2023**Murad Ali Khan****..... Petitioner****-Versus-****State of Odisha & Ors.****..... Opp. Parties****Advocate(s) appeared in this case:-**



For Petitioner : Mr. B. Bhuyan, Sr. Advocate
with Mr. Md. Gulam Madani, Advocate

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate

In WP(C) NO. 708 OF 2024

Sayed Farooque Raza **Petitioner**

-Versus-

State of Odisha & Ors. **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : Mr. B. Bhuyan, Sr. Advocate
with Mr. Md. Gulam Madani, Advocate

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate

In WP(C) NO. 1785 OF 2024

Md. Akhter Ahemed **Petitioner**

-Versus-

State of Odisha & Ors. **Opp. Parties**

Advocate(s) appeared in this case:-

For Petitioner : M/s. U.C. Mishra, A. Mishra, J.K. Mahapatra,
D. Debadarshani & S. Dash, Advocates

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate



In WP(C) NO. 17936 OF 2025

Sk. Saeed

..... Petitioner

-Versus-

State of Odisha & Ors.

..... Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. R.Jena & M. Padhi, Advocates

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate

In WP(C) NO. 19436 OF 2025

Moulana Sk. Abdul Gani

..... Petitioner

-Versus-

State of Odisha & Ors.

..... Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. P. Pattnaik, K.N. Muduli, D. Sahoo &
S.K. Swain, Advocates

For Opp. Parties : Mr. S.K. Jee,
Addl. Government Advocate

CORAM:

HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

Date of hearing & judgment : 08.09.2025



PER DIXIT KRISHNA SHRIPAD,J.

All these petitions, by the teachers of Government/Aided Schools, are presented to the Writ Court essentially grieving against the decision of answering OPs in revoking/rescinding licenses granted to them for registering Muslim marriage/divorce and for maintaining certain official records in that connection, as provided under the provisions of Orissa Muhammedan Marriage and Divorce Registration Act, 1949 and Orissa Muhammedan Marriage and Divorce Registration Rules, 1976.

2. Learned advocates appearing for the petitioners vehemently argue that the impugned action is unsustainable, inasmuch as their clients have been discharging the statutory duties, as licensees under the 1949 Act read with 1976 Rules, since years without compromising their duties as teachers; there is absolutely no complaint from any quarters in general and from the community of taught in particular; all of a sudden the impugned decision has been taken on an erroneous assumption to the contrary; there is absolutely no prohibition either in the 1949 Act or in any other statute, including the Conduct Rules, and therefore, the impugned decision in cutting short their rights needs to be voided, coupled with a direction to continue/renew their licenses. Learned advocates took the Court through the provisions of 1949 Act, 1976 Rules & also the Conduct Rules applicable to Government servants.

3. Learned AGA appearing for the OPs vehemently resists the petitions making submission in justification of the impugned decision and also the rationale, on which it has been taken. He contends that the impugned decision is not punitive; petitioners being the public servants and more



particularly civil servants of the State holding public office of teacher, and they are drawing salary in the prescribed pay scales; the registration of Muslim marriages & divorces and maintaining the official records in that connection would certainly affect discharge of their duties as teachers and that, in turn, would make adverse impact on the interest of pupils. So contending he seeks dismissal of writ petitions.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

4.1. A THUMB NAIL DESCRIPTION OF STATUTORY FRAME WORK:

(i) The 1949 Act was enacted by the State Legislature providing ‘for the voluntary registration of Muhammedan marriages & divorces’. It is a short enactment comprising of 27 Sections and a schedule. Section 1(2) of the Act extends the same to the entire State and it came into force advance. Section 2 is the dictionary clause of the Act; it has only 4 items, which are not relevant to the case at hand. Section 3 provides for grant of license to any person, who is a Muslim, and thereby authorizes him to register Muslim marriage and divorce. For that, an application shall be made to him. Government has also power to revoke or suspend such license. Section 6 enjoins the duty to these licensees to keep up certain books and registers relating to marriage and divorce. This stationery is provided by the State Government under Section 5.

(ii) Sections 8 & 9 of the Act prescribe the modalities, powers and procedures for registration of marriage/divorce. Section 10 enables Muhammedan Registrar to receive gratuity, in excess of the fee, if



voluntarily tendered. Section 11 specifies the persons, who have to sign in the forms prescribed in the Schedule to the Act. Section 12 states that copies of entries to be furnished to every applicant for registration, free of cost. Section 13 provides for indexing of registers and section 14 prescribes what these indices should contain. Section 15 provides for inspection of registers and taking up copies of entries, which shall contain seal and signature of these registrars. Section 16 prescribes fees in that connection. Section 17 vests supervisory control in the District Registrar over the Muhammedan Registrar.

(iii) Section 18 provides for general superintendence at the hands of Inspector General of Registration and he is empowered to make regulations for the guidance of these registrars. However, approval of the State Government is prescribed as a pre-condition for their taking effect. Section 20 provides for refusing to register marriage/divorce for reasons to be recorded in the prescribed book. Section 21 provides for appeal against the same. Sections 22 & 23 provide for up-keeping of registers and making them over to the Registrars of Districts by these Registrars. Section 24 delegates rule making power to the State Government. Section 25 makes Muhammedan Registrars public servants and their duty to be public duties. Section 26 is validation provision and Section 27 provides for repeal and savings.

(iv) The State Government has promulgated 1976 Rules in exercise of power under Section 24 of the Act. Rule 2A(1), with effect from 18.09.2006, is brought on the Rule Book and it prescribes a limitation period of thirty days for the registration of marriages. Rule 2A(2) provides for delayed registration of marriage/divorce with a penalty of Rs.20/-. Rule



3 prescribes certain qualifications for becoming Muhammedan Registrar. He should have acquaintance with the Arabic language and Muhammedan law of marriage and divorce; he should have good moral character. It also gives a list of Muhammedans, who will have preference for the post/privilege in question.

(v) Rule 4 empowers the District Registrar to nominate Muhammedan Registrars for issuing license. Rule 5 prescribes modalities of application for such nomination. Under Rule 7, the District Registrar has to forward the applications and its accompaniments to the State Government, which takes a decision to issue license. Rule 8 empowers the Government to prescribe examination to the licensees or to the applicants in matters, such as Arabic language, Muhammedan law of marriage and divorce, etc. Licenses will be granted in Form-B, says Rule 9. Rule 10 provides for Muhammedan Registrar to give up his license after reporting to the Inspector General of Registration through the District Registrar. Rule 12 speaks of leave and absence. Rule 14 specifically states that these persons are not Government servants.

(vi) Rule 16 enlists the register/books to be furnished to the Muhammedan Registrars along with seal and ink from the Government stores at cost price. Rule 18 prescribes table of fees and Rule 19 enables Muhammedan Registrars to retain their lawful remuneration from the fees received. Rest, he has to remit to the District Registrar, who, in turn, shall credit it to the Government. Rules 20 to 31 provide for elaborate procedure for application, attendance of parties and registration of marriage/divorce. Rule 32 empowers Muhammedan Registrar to effect corrections of errors in the registers with his endorsement on the margin. Rule 34 specifies the



circumstances wherein registration may be refused. Rule 36 mandates furnishing of reasons for such refusal to register. Rules 37 & 38 provide for refund of fees paid under Section 9 in certain circumstances.

(vii) Rules 39 to 47 mention about maintenance and destructions of Registers/Records and indices by Muhammedan Registrars and District Registrars, with the previous sanction of the Inspector General. Rule 48 provides for applications for search in the records and for copies of extracts. Procedure is also prescribed therein. Rule 49 empowers the Court for summoning of Registers/Records and inspection by Government Officers. The production of Registers/Records before the Court shall be by the Muhammedan Registrars or any Officer as may be deputed by the District Registrar.

4.2. MUHAMMEDAN REGISTRARSHIP, RIGHT OR PRIVILEGE:

(i) The text and context of Section 3 of the Act does not give any absolute right to get license and thereby become Muhammedan Registrar of marriages/divorces. The section employs the term “It shall be lawful for the State Government to grant a license to any person....”. This expression is explained by the English Court in *Julius v. Bishop of Oxford*;¹ wherein it has been observed as under:-

“The words ‘it shall be lawful’ are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power.”

¹ 1880-5 AC 214



(ii) The expression “to any person” is of a wider expanse and choice lies with the Government. Rule 3 of 1976 Rules accords preference to ex-Kazis, Muslim Government pensioners, Maulavies, Khandkars & Mullas. Therefore, the serving Government servants, such as the petitioners cannot claim license as a matter of right. The Government has abundant discretion. Of course, the same has to be exercised in accordance with *Rules of Reason and Justice*. The vehement submission of learned advocates appearing for the petitioners that their clients have been discharging the duties as Muhammedan Registrars of marriage/divorce since very long, does not create any vested right for renewal or extension. After all, a license of the kind does not create any interest in any office. It is more or less a matter of privilege.

4.3. MUHAMMEDAN REGISTRAR BEING A PUBLIC OFFICER/OFFICE:

(i) The text and context of various provisions of the Act and the Rules leave no manner of doubt that the Registrar of Muhammedan marriages/divorces holds a public office, to which certain powers and duties are attached. This is not only not disputed by the petitioners but asserted. The functions of this office have implications on the status of parties to the marriage or divorce, as the case may be. A public office like that of Muhammedan Registrar may not be an office of profit in the light of Election Jurisprudence; however, nevertheless, it is a public office. Section 25, which has the following text, adumbrates this view:-

“Every Muhammedan Registrar shall be, and be deemed to be, a public servant and his duties under this Act shall be deemed to be public duties.”



(ii) Several onerous duties are attached to the Office of Muhammedan Registrar. As already mentioned, his functions have far reaching evidentiary consequences on the status of marriage/divorce of Muhammedans. In registering marriage/divorce or refusing to register, he exercises *quasi-judicial* power vide Section 9 of the Act read with Rules 26, 27, 34, 35, 36 & 37 of 1976 Rules. These Registrars work under the supervision of District Registrars and the Inspector General of Registration to whom they are answerable. They have to maintain and update several Registers/Books. They have to examine parties and witnesses. At times, they have to travel to other places for the discharge of their duties. Rule 49 provides for their personal appearance along with Registers/Records, if the Courts summon them. That being the position, how will they be able to discharge their duty as teachers with absolute commitment in the Government Schools, is a big question. Teaching is a noble profession. It is teachers in general and primary/secondary school teachers in particular, who inculcate civilizational values & culture in the young minds. Therefore, our ancient scriptures chant '*Guru Saakshaat Parabrahma*' literally likening teacher to God. As such, the impugned decision of the Government, regardless of certain arguable defects therein, cannot be faltered.

4.4. The vehement submission of learned counsel for the petitioners that the OCA (CCA) Rules, 1969 nor the 1949 Act nor 1976 Rules prohibit the serving Government servants from becoming Muhammedan Registrars of Marriage/Divorce and therefore, the impugned order is vulnerable for challenge, cannot be countenanced. The Government is the appointing authority for the posts of teacher in its schools. Again, it is the Government, which is empowered to grant license to become



Muhammedan Registrars. It has first-hand experience and information as to the nature of functions the teachers do and the Muhammedan Registrars accomplish. Government, in its accumulated wisdom, is of the opinion that the performance of teaching would be materially affected, if teachers become Muhammedan Registrars. A Writ Court cannot run a race of opinions with the Executive. It has to respect the decisions of co-ordinate organs of the State consistent with the *Doctrine of Separation of Powers*, which is held to be a *basic feature* of the Constitution, vide ***Keshavananda Bharati v. State of Kerala***,².

4.5. The vehement submission of learned counsel appearing for the petitioners that the impugned order proceeds on a wrong legal premise that the presence of Kazi is *sin qua non* for a valid Muslim marriage, is arguably true. Such a sentence appears in the impugned order. Fizee in *Outlines of Muhammadan Law*, First Edition 1949, Oxford Publication at para-7 says:

“Marriage may be constituted without any ceremonial; there are no special rites, no proper officiants. The essential requirements are offer (*ijab*) and acceptance (*qubul*)....As to the form, the following conditions are necessary: (1) declaration or offer (*ijab*) on the part of the one; (2) acceptance (*qubul*) by the other (or by guardians, as the case may be); (3) before sufficient witnesses (i.e. in Hanafi law, two; in Shiite law witnesses are not necessary)...The *kazi* is ordinarily present. The *kazi* in India is the mere keeper of a register of marriage. His function is purely evidentiary. It is a mistake to suppose that he joins the couple in marriage; the marriage takes effect on the contract being completed between the parties.”

² AIR 1973 SC 1461



Merely because certain wrong things are mentioned by the authorities, their decisions, that are otherwise valid in their purport & intent, cannot be invalidated. A decision being wrong *per se* does not make it unsustainable, the issue of sustainability being central point of adjudication. It hardly needs to be stated that what ordinarily the Writ Court focuses, is the decision making process and not decision itself. More is not necessary to specify.

4.6. There is one more aspect to the matter: all these petitioners are admittedly civil servants and they are in permanent employment with settled families. They are drawing salaries regularly in attractive pay scales. It is not their case that what is being taken by them is insufficient for the livelihood of their families, and that they would have extra income if they are permitted to function as Muhammadan Registrars. On the other side of the spectrum, they have been thousands of persons in the Muslim Community, who do not have employment or that they are underemployed. Such persons may be preferred for the grant of license to function as Muhammadan Registrars of marriage & divorce, so that a penny or two would fall into their pockets on discharge of duties. That would be consistent with the idea of distributive justice enacted in Article 39(b) & (c) of the Constitution of India.

In the above circumstances, these petitions, being devoid of merits, are liable to be dismissed and accordingly they are, costs having been made easy.

.....
Dixit Krishna Shripad,
Judge