IN THE
SUPREME COURT OF THE STATE OF ISRAEL
SITTING AS THE
HIGH COURT OF JUSTICE

HCJ 465/89

Before: **Hon. Justice G. Bach**
Hon. Justice T. Or
Hon. Justice S. Aloni

Petitioner: **Ilana Raskin**

v.

Respondents: **1. The Religious Council of Jerusalem**

2. Rabbi Yitzhak Kolitz

3. Rabbi Shalom Mesas

Argued: **13 Kislev 5750 (December 11, 1989)**
Decided: **3 Sivan 5750 (May 27, 1990)**

The Supreme Court sitting as the High Court Of Justice
[December 11, 1989, May 27, 1990]
Before Justices G. Bach, T. Or, S. Aloni

On behalf of the Petitioner: Adv. N. Goldman

On behalf of the Respondents: Adv. D. Kirshenbaum, Adv. M. Dadon

JUDGMENT

Judge T. Or

1. The issue posed by this petition regards the authority and the considerations that may be taken into account when granting a Kosher Certificate under the 5743/1983 Anti Kosher Fraud Act.

2. The Petitioner performs Middle Eastern dances, also known as belly dancing, for a living.

She has performed at life cycle celebrations and other events at, among other places, banquet halls and hotels in Jerusalem. Towards the end of 1988, the Petitioner noted a drop in the amount of bookings she had received to perform. Upon investigating the matter, she discovered that the hotels and banquet halls had refrained from booking her because they were worried that their Kosher Certificate would be withdrawn if they permitted the Petitioner to perform in their banquet halls. They showed her a letter with the letterhead "Chief Rabbinate of the Jerusalem District and the Religious Council of Jerusalem" dated April 28, 1987, signed by Rabbi Binyamin Adler. The letter, which was entitled, "Instructions to Owners of Banquet Halls under the Supervision of the Chief Rabbinate of Jerusalem" stated:

> (a) It is prohibited to host or permit immodest performances.
>
> (b) When renting a banquet hall, the individual or company holding the event must agree, as part of the contract with the tenant, that they will not have any immodest performances [as part of the event]. Failure to comply with these conditions may result in the withdrawal of the banquet hall's Kosher Certificate.

From the Respondent's affidavit it is clear that the Jerusalem Rabbinate and Religious Council have since changed the form they use [to contract with establishments under its supervision]. However, even the new form states that banquet hall owners must refrain from permitting immodest performances and anytime the hall is rented out they must ensure that such performances are not held, because this condition is a prerequisite for receiving a Kosher Certificate.

As the Petitioner has already been informed by the owners of the Jerusalem banquet halls, the [banquet hall owners] are worried that their Kosher Certificate will be withdrawn if they allow her to perform in their halls; therefore, they are unwilling to permit event hosts that

are interested in making such performances a part of their event. The Petitioner was explicitly informed by these banquet hall owners, that the kosher supervisors have become quite strict in enforcing the provision against "immodest" performances and, as a result, she has received fewer bookings. According to the Petitioner, as a result [of the policy] she has received less invitations to perform and her income has been reduced as she is now limited to performing in private homes or in a few small restaurants who continue to hire her from time to time.

When the Petitioner realized that the reason for the decline in requests for her services was due to the instructions of the Chief Rabbinate and Religious Council, her attorneys wrote a letter to the Chief Rabbinate of Jerusalem. In this letter it was pointed out that according to the Petitioners and her fellow [dancers], "the instructions which precondition a Kosher Certificate upon the absence of dancers or other similar conditions is illegal and is outside the legal bounds of the Rabbinate's authority," and she requested that the condition be nullified. The Rabbinate replied in a letter through its attorney, Adv. Kirshenbaum, according to which its instructions regarding dancers at the banquet halls are "grounded in Jewish law" and adds:

> My client is legally charged with the task of ensuring that the banquet hall is kosher. The influence of my client is very important to the general public who relies upon kosher certification. Imposing conditions that are consistent with Jewish law is an appropriate action taken by my client.

3. Therefore, the dispute between the Petitioner and the Respondents is whether the Respondents are permitted to condition a Kosher Certificate, granted under the Anti Kosher Fraud Act to the owner of a food establishment requesting such a certificate, upon the absence of "immodest" performances in the hall in which food and drink are served. [Immodest performances] include eastern style belly dancing which is what the Petitioner does for a living.

The Petitioner claims that such instruction and the refusal to grant a Kosher Certificate under the aforementioned law to anyone who permits belly dancing in their food establishment is either outside the boundary of the law or a misuse of the authority granted to the Respondents, and is thus void.

4. The law under which the Respondents operate is the Anti Kosher Fraud Act (henceforth, "the Act"). Section 2(a) of the Act informs us of who is permitted to grant a Kosher Certificate under the Act, stating that it is the Chief Rabbinate of Israel or any other authorized rabbi including a local Rabbi (as defined by the Act) who serves the community in which either the food establishment, slaughterhouse or food production center is located.

Respondents 2 and 3 are the Rabbis of the City of Jerusalem, and as such, they are the [authorized] local Rabbis under Section 2(a)(2) of the Act. Respondent 1 is authorized to enforce kosher laws in the city under the 5731/1971 Jewish Religious Services Act using the guidelines of Respondents 2 and 3.

The Section of the Act that is relevant to this petition is Section 11 of the Act, which states, "When granting a Kosher Certificate, the [supervising] Rabbi may only take the laws of kashrut into account." According to the text of this Section it is clear that it is delineating what considerations the [kosher supervisor] may take into account when deciding whether to grant a Kosher Certificate. The question we must now answer is what this guideline includes and what considerations are permitted under this Section.

The Petitioner claims that the Section limits the considerations the kosher supervisor may take into account only to those involving the kosher status of the food itself, and he cannot base his refusal to grant a Kosher Certificate upon events or considerations that are unrelated to the preparation and service of the food, although related to other [areas] of Jewish law. The

Respondents claim that when determining whether to grant a Kosher Certificate, they may take into account considerations relating to the status of the place itself and the events that take place there under Jewish law, even if there is no relation between the events held and the preparation and service of the food.

5. The [legal] status of Kosher Certificates is set by a secular law through which Respondents 2 and 3 receive their authority to grant Kosher Certificates. When it comes to granting Kosher Certificates, the [legal] status of Respondents 2 and 3 is the same as any administrative authority that must act within the framework of its authority and take into account relevant considerations in line with the rules all administrative authorities are bound by. If we determine that the Respondents acted outside the bounds of their legal authority or took into account irrelevant considerations that, by law, may not be taken into consideration or used as a guideline, this Court may involve itself and nullify the decision of the Respondents. HCJ 195/64 *Southern Company Ltd. v. The Council of the Chief Rabbinate*, IsrSC 18(2) 324. As stated in HCJ 195/64, the fact that the Rabbis are authorized to grant Kosher Certificates according to the principles of Jewish law does not inhibit this Court's ability to determine whether the Rabbis exceeded their authority under law. *See* HCJ 44/86 *Butchers Association of the Jerusalem District v. The Council of the Chief Rabbinate of Jerusalem*, IsrSC 40(4) 1, 4 (*Shamgar*, President).

6. The Act grants the authority to grant Kosher Certificates to a [Jewish] religious body, the Council of the Chief Rabbinate, a Rabbi appointed by the Rabbinate or a local Rabbi. However, we must remember that we are dealing with a secular law. Therefore, the scope of the authority granted to those authorized to grant Kosher Certificates is determined by this law and the accepted rules of [statutory] interpretation for secular laws. These rules are designed to find the

purpose of the law and its goals, in light of which we can arrive at the proper interpretation.

This is not the first time we have [interpreted a law based on its purpose]. For example, we have stated, "Laws are an instrument by which legislative goals can be implemented; therefore, they must be interpreted in light of their stated goal." CA 481/73 *Administrator of the Estate of Elza Bergman v. Shatsel*, IsrSc 29(1) 505, 516 (*Sussman*, J.). Also, "Laws are part of the normative process and are made to fulfill a social purpose and are an expression of policy. The interpreter must reveal, among the spectrum of possibilities, the meaning that will fulfill the purpose of the law." FH 40/80 *Koenig v. Cohen*, IsrSC 36(3) 701, 715.

In our case, we must trace the proper intent and interpretation of Section 11 of the Act. The focus of the dispute between the sides is the question of what is the meaning of [the term] "rules of kashrut," which is the only consideration the authorized Rabbi may take into account when deciding whether to grant a Kosher Certificate. To interpret this we need to clarify the purpose of the Act in which Section 11 appears and includes the term "rules of kashrut," and what "rules of kashrut" the Act intends to include in light of its stated purpose of preventing deceit in the kosher [industry].

We have already established more than once that when the legislature uses a term in [Jewish] religious law, which from a religious legal standpoint has more than one meaning, but is used in accordance with the normative meaning of a piece of legislation, the term may be understood differently to how it is usually understood by religious law. For example, in HCJ 58/68 *Shalit v. Interior Minister*, IsrSC 23(2) 477, Justice *Sussman* interpreted the term "Jew" as it appears in the 5710/1950 Law of Return differently than how it is understood in the 5714/1953 Rabbinical Court Jurisdiction Act (marriage and divorce), and, while this is quoted often, it is worth quoting again (at 513):

> A term in a statute is a creation that dwells among its surroundings. It gets its character from the framework in which it finds itself, which teaches us that it must be interpreted in light of the purpose of the legislation in which it is found and not another which it does not come to serve… When you equate a law that comes to authorize a religious court, which judges according to Jewish law, you have no choice but to define a Jew as someone who the religious court recognizes as a Jew according to the law that it applies. Not only are non-Jews not subject to the jurisdiction of the Jewish religious courts, but people who whose Judaism is questionable are not either… But when you ask whether a person is a Jew for the purposes of the Law of Return, which was enacted in order to establish the status of [Jews wishing to return to their national homeland], the legislative purpose requires the conclusion that someone who has disconnected himself from the Jewish religion can no longer be considered a Jew.

Justice *Barak* made a similar statement in HCJ 265/87, HCJApp 388, 387, 376, 360, 355, 211/87, 405, 359, 155, 39, 38, 36, 35/88, 381/89 *Bradford v. Interior Minister*, IsrSC 43(4) 793 when he addressed the issue of the definition of the term "Jew" in the amendment to the Law of Return. When explaining his approach to what the legislature intended when it refers to one who is born to a Jewish mother and "is not the member of another religion," Justice *Barak* states (at 843):

> In my opinion, the determination of when someone who is born to a Jewish mother is not the member of another religion is made according to secular criteria, which require the interpretation of the Law of Return in light of its purpose.

In our case, there is no dispute as to the fact that [the term] "laws of kashrut" in Section 11 refer to religious laws. The dispute is whether the secular legislature, when referring to "only the laws of kashrut" and when taking into consideration the purpose of the Act, only intended to include

the laws of kashrut as they relate to food production, sale and service, and no other religious laws.

7. In order to determine the purpose of the Act and its instructions, it is appropriate that we first try to derive it from the language of the Act itself. The title of the Act informs us that its purpose is to prevent deceit in the kosher industry. The Act does not intend to delineate the rules of kosher or its obligations. Its only goal is to prevent deceit and protect those who keep a kosher diet. From the language of the Act, we can see that it deals specifically with the kosher status of food. For example, in Section 1, the term "food establishment" is defined as a place in which food or drink is sold or served to the public; regarding hotels, it includes the parts of the hotels in which food or drink is prepared or served. Additionally, other sections of the Act demonstrate that the Act is dealing with deceit as it relates to the kosher status of the food being sold or served to the public.

The attorney for the Respondents asks that we derive from Section 3 of the Act that the Act also refers to the kosher status of the place in which the food establishment is found, regardless of the kosher status of the food sold or served there.

Section 3 states:

> (a) The owner of a food establishment may not advertise his establishment as kosher, unless he has a Kosher Certificate.
>
> (b) The owner of a food establishment who has a Kosher Certificate and the food establishment in question is shown in [the certificate] to be kosher may not serve or sell items that are not kosher according to the law of the Torah in [his establishment].

It does not seem to me that we can use this Section to derive that the existence of a Kosher Certificate at a food establishment attests to the kosher status of the place aside from its kosher

status as a place that sells or serves kosher food, as the attorney for the Respondents asks. The intention of the Section is to prevent misleading the public as to whether the food establishment in question serves kosher food or not. Someone who has not received a Kosher Certificate for the food served by him at his food establishment may not mislead the public by posting something that makes it seem as if he has a Kosher Certificate (paragraph (a)). One who has a Kosher Certificate may not sell food that is not kosher in his [certified] establishment (paragraph (b)). The two parts of the Section are meant to protect the public from eating food that is not kosher, and they both deal with preventing fraud against the public in regards to kosher food served by the food establishment in question.

8. Looking to the 5749/1988 Anti Kosher Fraud Regulations (Kosher Certificates) (henceforth, "the Regulations") which were enacted in accordance with the Act we see that the author of the Regulations also understood the Act in this manner. When looking at the form titled "Request for Receiving a Kosher Certificate" we see, in addition to the Regulations, that the information that is to be provided by the applicant is all related to the kosher status of the food to be sold or served and not the kosher status of the place. All the questions are with regard to how the food is cooked, the names of the cooks and the supplier of the food, but no question is asked relating to the use of the banquet hall or the like, which has nothing to do with the kosher status of the food itself.

9. The legislative history of the Act leads us to a similar conclusion. In the proposed 5743/1983 Anti Kosher Fraud Act, which preceded the Act, Section 12 was drafted identically to Section 11 of the accepted version [of the Act]. Likewise, Section 7 of the proposed 5726/1966 Anti Kosher Fraud Act contained an identical provision. In referring to Section 7 of the proposed 1966 law, Professor M. Elon writes in his book, RELIGIOUS LEGISLATION IN THE LAWS OF THE

STATE OF ISRAEL AND THE JURISDICTION OF THE COURTS AND THE RELIGIOUS COURTS 20 (Kibbutz HaDati, 5728 (1968-69)), that "it seems that the intent of this Section is that the considerations taken into account when deciding whether to grant a kosher [certificate] are only those which directly concern the production and preparation of the [food]. *See* Shulhan Arukh, Yoreh Deah 119:7." [Elon] writes that what prevented the proposed legislation from [being brought to a vote] was the opposition of the Council of the Chief Rabbinate to, among other things, the aforementioned Section 7. This means that even the Chief Rabbinate agreed that the instructions of this Section come to limit the considerations that the [Rabbi] granting the kosher certification can take into account to those relating to the production and preparation of food, which they were opposed to.

The intent to limit the Act as referring to the kosher status of the food we see from the comments upended to the proposed 1966 law and the Knesset debates during the course of the proposed legislation. In the explanation to the proposed legislation it was stated (at 119):

> The subject of kosher status is different from other features of [food] products because it is not tangible and it is hard to establish the kosher status of an item by conducting a lab test or a similar procedure. Therefore, existing legislation is not enough to fight this unique type of fraud or deceit in [food] items, and there is a need to add the guarantee that will be provided by this proposed law.

From this we see that it is the kosher status of food items and prevention of fraud relating to that kosher status that motivated the proponents of the proposed legislation. Since the kosher status of food items is not visible to the naked eye alone and there is great concern for fraud regarding their kosher status, the need arose for the legislature to legislate a special law regarding the kosher status [of food]. However, the intent of the proposed law was only to deal with the kosher

status of food and did not address the question of whether food establishments must be run in accordance with Jewish law with regards to issues unrelated to the kosher status of the food sold or served in it.

When the proposed measure was brought for a first vote on the Knesset floor (on May 4, 1983), Minister Y. Burg stated:

> I want to clearly state… that we are primarily dealing with the kosher status of food, its preparation and treatment, the kosher status of kitchens and the kosher status of cafeterias and nothing else… The intent is to protect the kosher status of food products… We refer to the concept of the kosher status of food products so that there is consistency between the label under which the product is sold and the true content of the product.

See Knesset Hearings (5743/1982-83), at 2091.

Additionally, the words of the Chairman of the Knesset's Constitution, Law and Judiciary Committee, when bringing the proposed law to the Knesset floor for a second and third reading, made it clear that the purpose of the law relates solely to the kosher status of food. When referring to the goal of the Act, the Chairman stated:

> Someone who eats food that is not kosher will suffer no harm if he is fed food that is kosher. However, the damage suffered by someone who wishes to keep kosher, but is given food that is not kosher, cannot be measured.

Knesset Hearings 97 (5743/1982-83), at 3152.

In referring to the difficulty in regulating the issue of kosher status, which is an issue that is religious in character and is based on the laws of the Torah, incorporated into secular law, the Chairman clarifies the parameters of the law:

> The law does not go into the considerations taken into account by religious law, and,

> therefore, does not tell us who has the right to receive a kosher [certification], it only limits the considerations which a Rabbi may take into account – as stated in Section 11 - when deciding whether to grant a Kosher Certificate to the matter of kosher status alone. The Rabbi may not take any other considerations into account, like, for example, considerations relating to the actions and opinions of the owner of the food establishment in question.

Id.

10. We can see, whether from the interpretation of the [relevant] sections or its legislative history, that the Act's goal and purpose is to prevent deceit in the kosher status of food and its preparation and service, and is not meant to serve any other interest of religious law regarding issues unrelated to kosher laws as they relate to food. As we have said, this is a secular law that deals with the "laws of the kosher status" of food alone, and the authority provided does not include the authority to impose other religious laws unrelated to those dealing with the kosher status of food. Such use of authority and taking into account considerations that are irrelevant to the kosher status of the food are outside the bounds of the authority granted by the Act for granting a Kosher Certificate. This is a secular law meant to prevent deceit in the kosher certification of food, and when the Act refers to granting kosher certification, its intent is that the certification is for the sole purpose of declaring the kosher status of the food in question. With regard to the place in which the kosher food is served, [the Act] does not authorize the kosher supervisor to impose standards regulating behavior upon the place, even if they are standards that would guarantee compliance with Jewish law, if the standards do not change the kosher status of the food itself. If unlawful use of this authorization is utilized, this Court must involve itself.

11. From the evidence presented to us, it seems that the Respondent's use of their authority to

grant Kosher Certificates and the conditions they set for granting them were outside the boundaries of the relevant considerations [they may take into account] because they included [conditions] that cannot be taken into consideration when deciding to withhold a Kosher Certificate.

For example, a letter written by the supervising Rabbi of the Jerusalem District Chief Rabbinate in charge of hotels, dated May 24 1989, warns the owner of the "Laromme" Hotel in Jerusalem that hosting a missionary event in the hotel may affect the kosher certified status of the hotel. Additionally, in a letter dated January 26 1989, the Chief Rabbinate of the Jerusalem District warns a hotel against hosting a Torah completion ceremony being held by women, stating, "We cannot agree to allow an institution which receives a Kosher Certificate from us to host such an event." In a similar vein, the Chief Rabbinate has also warned against "hosting New Year's celebrations, Christmas celebrations or any similar holiday. Likewise, [kosher venues] may not put up a Christmas tree." From a letter dated November 1, 1989, signed by Rabbi Bernstein, supervising Rabbi of the Jerusalem District Chief Rabbinate it is clear that anyone who does not follow these directives is not fulfilling their requirements for maintaining their kosher certified status.

An affidavit, signed by Yonatan Harpaz, the CEO of the Jerusalem Hotels Association, states that the Chief Rabbinate of Jerusalem has informed the hotels in the city that if they permit the operation of microphones during lectures held on the Sabbath outside the hotel cafeteria, host New Year's parties, put up a Christmas tree in their hotels, employ a Jewish worker at the main concierge desk on the Sabbath or play music on the Sabbath, they may have their Kosher Certificates revoked. (*See* HCJApp 494/89 (regarding other requirements set by the Jerusalem Chief Rabbinate)).

The responding affidavit filed by the Respondents states, in the opinion of the Respondents, that in addition to the kosher status of the food the supervising Rabbi must also ensure that the venue and its surroundings are supervised as well. As Rabbi Yehoshua Pinsky, the affiant for the Respondents, asks, "Is it possible that the Rabbinate will issue a kosher certification to a place in which the food may be kosher, but ignore the character of the place and the events being held there?!" *See* paragraph 16(a) of Respondent's affidavit. He adds and emphasizes that the position of the Respondents is that a hall presented to the public as "Kosher, under the Supervision of the Jerusalem Rabbinate" appears to the public as a certification for the entire venue, not only in the narrow sense as referring exclusively to the food. When referring to the aforementioned [application] form he notes that it does refer to both the kosher status of the food and "immodest events." *See* paragraph 25 of the Respondent's affidavit.

Similarly, the memorandum filed by the second Respondent, attached to the responding affidavit states:

> Clearly you cannot require the rabbi to grant a Kosher Certificate to a meal during which an abominable event is taking place, because the rabbi cannot mislead the public or be suspected of granting kosher status to a place that it is forbidden for him to grant such certification as explained above. It makes no difference whether the rabbi cannot grant kosher certification due to [food related] the laws of kashrut or because of any other [religious] prohibition, because it is clear that it is impossible to force the rabbi to transgress any prohibition in order to grant kosher certification, and in such a case, by merely granting the certificate, the rabbi is committing a transgression.

Similarly, in an interview on "Kol Yisrael" the second Respondent stated that a venue in which events hosted by the Conservative movement are held a Kosher Certificate would be withheld.

He states, "Conservative [Judaism] and a Kosher Certificate of the Chief Rabbinate cannot be together." Likewise, "if the [applicant] is Reform or Conservative, we will grant a kosher [certificate], but if the place is run in a Reform or Conservative manner, we cannot grant a kosher [certificate]." *See* Appendix D of HCJApp 494/89.

We see that the opinion of the second Respondent is that when the supervising Rabbi comes to grant a Kosher Certificate, in addition to the kosher status of the food, he must also supervise whether the banquet hall hosts or intends to host events that are inconsistent with Jewish law, even if they are not prohibited by kashrut laws, [and if they do] he can withhold a Kosher Certificate from the owner of the establishment. Furthermore, a supervising Rabbi must discern whether other areas of Jewish law are being observed, not only whether kosher laws are being adhered to. In other words, observing the laws of kosher food alone is not enough to receive a Kosher Certificate. This is how the honored Rabbi understands the role of the kosher supervisor, as he clearly states in his memorandum when referring to what the supervising Rabbi must take into account when determining whether to grant a Kosher Certificate:

> We are not coming to analyze or interpret the Anti Kosher Fraud Act, but rather to briefly analyze how Jewish religious law treats the issue of granting a Kosher Certificate. What is the obligation of the one granting the kosher [certification], an obligation that must be filled honorably by not deceiving himself and certainly not others?

What we can see from this is that according to the Respondents' position, once an application has been filled for a Kosher Certificate and submitted to the Rabbis, a Rabbi, wishing to be at peace with himself, may withhold a Kosher Certificate when the food establishment in question hosts events that are inconsistent with Jewish law, even if they keep the laws of kashrut as they relate to food.

12. This approach is inconsistent with the goal of the Act, which provides the authority for granting Kosher Certificates, and its purpose. Whatever the opinion of the [Rabbi] authorized to determine whether to grant a Kosher Certificate to the applicant for a certificate or the food establishment in question, when the [Rabbi] exercises his authority, he must only take into account those considerations which are valid under law, and no other considerations which are irrelevant to the goal and purpose of the Act. A local city Rabbi may express his opinion against activities taking place at food establishments or at hotels when [these activities] are against his religious outlook and against Jewish law. He may also advise that [these activities] be stopped, and that people should not take part in certain events that occur in certain places, if, in his opinion, this is proper according to Jewish law. However, when the law authorizes him to grant Kosher Certificates and delineates what considerations he may take into account when making the decision whether to grant a Kosher Certificate, he may only take these considerations into account. If these conditions are met, he must grant a Kosher Certificate because this is the dictate of the legislature.

Anyone who sees a Kosher Certificate in a hotel or in a food establishment must understand that the certification is not a stamp of approval stating that the establishment as a whole operates according to the rules of Jewish law. The significance of the certificate is solely that the owner of the establishment keeps the rules of kosher in the sense that the food served is kosher and nothing more. Anyone interested in keeping kosher may eat there without having to worry that he is being deceived as to the kosher status of the food. In this way, the goal and purpose of the Act is upheld. Whether a potential patron decides to dine there or not for reasons other [than the kosher status of the food] is a matter left to each person to decide on their own. If the authorized Rabbi or any other Rabbi feels the need to advise his followers that, based on

religious law considerations unrelated to the kosher status of the food, it is proper to avoid the services of a particular hotel or food establishment, he may advise them as such. However, such religious law considerations may not be taken into account when determining whether to grant a Kosher Certificate. So long as the owner of a food establishment upholds the laws of kosher food, he is entitled to receive a Kosher Certificate.

Before the Act was enacted, Rabbis had the authority to determine whether to grant kosher certification to food products or food establishments based on their own discretion [based upon which] they could either grant or deny a kosher [certificate]. Anyone interested in kosher food could choose the kosher food he wanted according to his level of trust in the kosher supervision provided by a particular Rabbi, as each Rabbi would take his own considerations into account without having to provide any explanation. With the enactment of the Act, authorization for granting Kosher Certificates was granted to only those included in the Act. The Act also limits the spectrum of considerations that may be taken into account to those relevant to a Kosher Certificate as described above, and its goal and purpose is to prevent deceit in the kosher status of food. The Act assists with the need to safeguard the laws of kosher food; its production, preparation and service thereof, and ensure that the Kosher Certificate will only be granted to those who observe [all these rules] without taking into account the level of observance the owner has to other rules of Jewish law, whether in the personal life of the applicant or in the way in which he manages his business, so long as the kosher status of the food that he sells or serves is not compromised.

13. In his claim, the attorney for the Respondents is clearly aware of the fact that the Respondents may not take into account considerations unrelated to the kosher status of food when deciding whether to grant a Kosher Certificate. [During the hearing] he made a "tactical

withdrawal" to an extent, (compared to what was stated in the responding affidavit and letters submitted by the Respondents) when he agreed that the laws of modesty are not relevant to the question of whether a [food establishment] is entitled to a Kosher Certificate under the Act. Immodest clothing worn by a woman in a food establishment is not enough, even according to him, to withhold a kosher [certificate] from a food establishment. The same applies to [a venue] in which men and women dance together. However, he emphasized that in this case we are dealing with belly dancing on the part of the Petitioner, which is entirely – according to him – built upon sensual and sexual stimulation. Such a performance, he claims, is forbidden even according to the laws of kosher and justifies withholding a Kosher Certificate from a food establishment which hosts such performances. The attorney for the Respondents lists several reasons for this, and we will address them one by one. But first, it would be appropriate to mention a few things.

First, although the attorney for the Respondents agrees that the laws of modesty are not relevant to granting a Kosher Certificate, we did not hear any clarification as to the distinction between belly dancing and other prohibitions under the laws of modesty from a religious law standpoint, explaining why the former does influence the kosher status of food and the latter does not.

Second, during the hearing the attorney for the Respondents wished to direct us to the religious legal source, if such a thing exists, which, according to him, teaches that a place hosting dances like those of the Petitioner is not fit for a Kosher Certificate for the food served there; however, he never provided such a source in religious law. While we have yet to directly address the claim of the Respondents, what we want to emphasize here is that we were not provided with a source in Jewish religious law that establishes that food loses its kosher status when served in a

place which hosts performances by belly dancers, as opposed to another place which [may not host belly dancing] but does not keep all the religious laws of modesty. The claim of the attorney for the Respondents that a local Rabbi may decide to withdraw the Kosher Certificate of an establishment which hosts such dances so that the absence of such events serves as a precondition for obtaining a Kosher Certificate for the food does not stand. We have already stated that the purpose of the Act is to prevent deceit when it comes to the kosher status of food. Therefore, preconditions and requirements that are unrelated to the kosher status of food are not within the framework of considerations that may be taken into account by those authorized to grant Kosher Certificates. If we were to accept the claim of the attorney for the Respondents, we would effectively render meaningless the main purpose of the Act, and we would grant those authorized to grant Kosher Certificates power beyond that which was intended by the Act.

Third, we asked the attorney for the Respondents whether in other places in Israel local Rabbis condition Kosher Certificates upon the absence of such performances like that of the Petitioner. We did not receive an answer to this question, and we could understand from the words of the Respondents' attorney that as far as he knows this is unimportant. According to him, even if this is not a precondition for receiving a Kosher Certificate in other places, this does not disqualify the actions of the Respondents. We asked our questions based on the fact that the evidence before us indicated that the demand in question is not universal among all supervising Rabbis and during the time immediately after the Act went into effect, there was no requirement that belly dancing be absent from the venue as a precondition for receiving a Kosher Certificate, even in Jerusalem.

Additionally, a further issue is that the Act is in effect throughout the country, and should thus be interpreted uniformly throughout the country. If, for example, in Haifa a Kosher

Certificate were granted to a food establishment in which performances such as the Petitioner's are held, it would be unreasonable if, under the same Act and under similar circumstances, a Kosher Certificate were withheld in Jerusalem. As we said above, the Act establishes what core demands and preconditions may be made of an establishment seeking a Kosher Certificate for its food. These requirements are the same across Israel. Anyone who requires more and is more particular in his observance of all religious laws may rely on what his Rabbis or deciders of religious law hold and refrain from eating at a certain food establishment. However, [refraining from patronizing a particular food establishment in such a case] would not be because the food at the establishment is not kosher as understood by the Act, but rather because of other reasons related to his beliefs and desire to observe other religious laws.

We now turn to the reasons of the Respondents for withholding Kosher Certificates from food establishments because they host belly-dancing performances.

14. The first reason was that granting a Kosher Certificate to an establishment which hosts performances such as that of the Petitioner is forbidden because of the [religious] law of "*marit ayin*" (literal translation: "what is seen by the eye"). Rabbi Kolitz deals with this issue at length in his memorandum. The importance of this point, as it relates to this case, is that anyone who comes to eat at the food establishment in which the Petitioner performs and sees the Kosher Certificate may be led to believe one of two things: either that such a performance is not prohibited by religious law, a [mistake] that is very serious in the eyes of Rabbi Kolitz because such performances are abhorred and forbidden under religious law, or the diner will conclude that the [supervising] Rabbi is granting such a performance his stamp of approval and is thus untrustworthy and, therefore, a kosher [certification] granted by [this Rabbi] is not valid under religious law even in regards to the kosher status of the food.

With all due respect, this reason is completely unrelated to the kosher status of the food.

It is also built on the thinking that a Kosher Certificate granted by the Act attests to the kosher status of the character of the food establishment and the actions performed there beyond those relating to the kosher status of the food. As we have already mentioned, a Kosher Certificate granted under the Act establishes only that the food in a particular place is served in accordance with all the laws of kashrut. The Kosher Certificate says nothing about the establishment's adherence to all religious laws. From the memo submitted by Rabbi Kolitz, as quoted above, he refers to a more general type of kosher certification, and not one which only addresses [the kosher status of food]. In such a case, perhaps there would be an issue of *marit ayin*, but not in the case we are addressing.

15. Another reason provided addresses the fact that when the Petitioner is performing in the banquet hall, the supervising Rabbi cannot be present, because being present is prohibited under religious law. When he is not present, he cannot supervise what is being done at the hall, including supervising the kosher status of the food. This argument does not stand either.

Adequate supervision on the part of kosher supervisors means guaranteeing that only kosher food is brought into the banquet hall, and this can be done even during the course of the 15-20 minute performance when the kosher supervisor is not in the banquet hall itself. There is no precondition for a kosher supervisor to be able to enter every place in which food is served - like room service, for example.

Additionally, when food is served at a mini bar next to a hotel pool, where there are immodestly dressed swimmers in the pool and the kosher supervisor is not present, there is no claim that the Kosher Certificate must be withheld from the hotel because food is served poolside.

The Respondents, as the sole provider of Kosher Certificates, must take the necessary steps to ensure that there is adequate [kosher] supervision, even when a performance they find distasteful is being held. It seems that with the right amount of effort and by taking the appropriate steps, it will not be difficult for them to ensure this. However, it seems that they are not prepared to do this. Take, for example, the fact that the hotel owners have proposed, even according to the attorneys for the Respondents during the course of the hearing, that Kosher Certificates be granted on the precondition that when performances such as those of the Petitioner are held, during which the kosher supervisor is not present in the hall, no food will be served or that the performances will be held after the meal has ended. It seems that with a little effort, good will, and disregard for considerations not relevant to the kosher status of food it, it will not be difficult to reach a solution in which the kosher status of the food in question will not be compromised even if performances such as that of the Petitioner are held in a hotel or banquet hall which carries a Kosher Certificate. The Respondents' refusal to reach a solution either as suggested or a similar one raises the suspicion that that they do not exclusively take legal considerations relating to the kosher status of the food into account when refusing to grant a Kosher Certificate to a food establishment which hosts the performances of the Petitioner.

16. Another reason, provided in the memorandum of Rabbi Mesas, is the concern that someone who does not adhere to religious law in permitting performances such as that of the Petitioner, may not be reliable when it comes to the kosher status of food. The kosher supervisor cannot be everywhere in the food establishment at once during all hours of the day, so observing the laws of kosher are also based upon a level of trust in the owner of the food establishment as well. When the [owner] does not observe the laws of modesty and permits performances like those which the Petitioner is involved with, he cannot be relied upon to keep the laws of kosher

food.

We cannot accept this claim either, as it is merely a way to impose the observance of all religious law. If because the owner does not observe all religious laws in his place of business, the owner of the food establishment cannot be trusted, according to the same line of thinking only someone who fully observes all religious laws in his place of business may receive a Kosher Certificate. This claim clearly contradicts Section 11 of the Act, as explained above, that [the kosher supervisor] must determine only whether the laws of kashrut are being kept, and not whether other religious laws are being observed, which, if not, will not harm the owner's ability to receive a Kosher Certificate.

17. The attorneys for the Respondents also raised a number of claims against the right of the Petitioner to seek relief. Among the claims put forth, only two are worthy of being addressed, and these are addressed here in brief.

The first claim is that the relief sought in a case where a Kosher Certificate is withheld is covered by Section 12 of the Act, which states, "Someone who has been refused a Kosher Certificate may appeal to the Chief Rabbinate of Israel." The attorney for the Respondents claims that this is the only way to legally challenge the denial of a Kosher Certificate.

This claim is erroneous. Section 12 provides a remedy for one who has applied for a Kosher Certificate, specifically a food supplier or the owner of a food establishment, and was denied. This is not the case [here]. The Petitioner did not apply for a Kosher Certificate and is not entitled to one either. The Petitioner is someone who is affected by the conditions set by the Respondents that deny a Kosher Certificate to the owner of a food establishment who permits her to perform. Hotel owners and the owners of food establishments that have accepted the conditions of the Respondents are deterred from confronting them for fear of losing business if

their Kosher Certificate is withdrawn. However, the Petitioner, who is harmed by the actions of the Respondents, has a claim against the actions of the Respondents, even if the hotel owners have refrained from bringing a claim. The path open to her is turning to this Court for relief in the form of preventing the Respondents from making unauthorized use of the power granted to them by the Act.

This clarifies the [status] of the second claim made by the attorneys for the Respondents according to which the Petitioner has not proven that she has suffered damage as a result of the Respondent's polices and conditions for receiving a Kosher Certificate and, thus, should be dismissed. From the affidavit filed by the Petitioner it is clear that her income has been significantly reduced and this claim is supported by documentation attached to her affidavit regarding the cancellation of her performances in light of the Respondents' position and demand that performances like hers be stopped by those who wish to apply for a Kosher Certificate.

18. On the basis of all that we have said, this order shall be made permanent and it is established that the Respondents may not condition a Kosher Certificate upon the absence of belly dancing or [other] "immodest performances" at the food establishment applying for the certificate, under the terms of the Act.

Also, I would obligate the Respondents to pay the costs of the Petitioner in the amount of NIS 5,000 as of today.

Justice S. Aloni

I join with the decision of Justice *Or*, and I have nothing more to add.

Justice G. Bach

I agree with the opinion of my esteemed colleague, but I would like to add a few comments:

1. As my colleague mentioned in his opinion, the Respondents must distinguish between religious laws directly associated with the kosher status of food, which may be taken into consideration when exercising their authority pursuant to Section 11 of the Anti Kosher Fraud Act, and other considerations, which may not be taken into account, even if they are based on religious law.

The difficulty in putting this rule into practice arises when a particular area of religious law falls into both categories. The laws of the Sabbath, which were addressed by the attorneys for both sides in their arguments, are an example of this. If the Respondents are convinced that a particular food establishment prepares food in violation of the Sabbath, they may take this consideration into account when deciding whether to grant a Kosher Certificate under Section 11 of the aforementioned Act as it falls into the category of the laws of kosher. I note that counsel for the Petitioner has also agreed to this proposition.

On the other hand, if it is clear to the Respondents that, for example, in order to participate in the event there is transportation being provided for guests in violation of the laws of the Sabbath or music is being played [on the Sabbath] in violation of religious law; this would not be justification for withholding a Kosher Certificate under the Act.

2. Obviously the Respondents are not permitted to take into account aspects that are completely irrelevant to the issue of kosher food such as the membership of the owner of the food establishment in a particular stream of Judaism or the hosting of a ceremony or party that is distasteful to the Respondents.

To the credit of the attorney for the Respondents, there was no effort to justify acts attributed to some rabbinical factors in some of the examples attached to the case by the Petitioner and that were mentioned in the opinion of Justice *Or*. [Counsel for the Respondents]

noted that the circumstances of those cases, which were not related to this petition, were not fully clarified, and, in fact, no Kosher Certificate has ever been withdrawn from any hotel or food establishment because of the occurrence of any such event. However, if such a thing were to happen, he did not believe that such acts could be defended.

3. As for this specific case, it seems to me that the Respondents should, beyond the legal considerations that guide this decision, reexamine their approach to this issue within the framework of their main goal. They must not forget that there are many groups in society who have adopted certain practices, which they have become accustomed to, for example [attending performances] such as the one in question, which they find of interest. Likewise, they must understand that ideas and understandings have changed over time and an act that may be considered sensual and may have been at one point considered inappropriate or immodest is nowadays not considered to be such by most members of the public, whether they themselves enjoy this type of performance or prefer another type of entertainment.

Another fact is that, many of those wishing to include a performance, such as the one provided by the Petitioner, in a ceremony associated with a family celebration are also interested in ensuring that the food served to them and their guests is in accordance with the demands of kosher laws. I believe that the main purpose of ensuring the distribution and consumption of *mehadrin* (literal translation: "strict") kosher food justifies, to a certain extent, an amount of flexibility concerning certain performances and their appropriateness in changing realities.

A good example of this flexible and constructive approach can be found in the *responsa* of the great deciders of [Jewish] law. The late Rabbi Moshe Feinstein, who lived in the United States, was known as one of the great deciders of Jewish law in our generation. Someone once asked him a question relating to a Jewish sports club whose restaurant sold non-kosher food. The honorable Rabbi

was asked whether in his opinion "[one] can act to ensure that the establishment would be under the supervision of reliable Rabbis and will not prepare food on the Sabbath, but will be permitted to serve milk to whoever wants…including] cold dairy ice cream after a meat meal…"

The Rabbi responded that it is permitted. In his answer he said, among other things, that "[the purpose of] rabbinical kosher supervision is not to ensure that the sellers are righteous people… rather it is for the Rabbis to supervise the establishment and ensure that what is being sold to consumers is kosher, whether dairy or meat products, and that they do not cook on the Sabbath…"

Furthermore, the Rabbi stated, "On the [certificate] provided by the Rabbis [which is] posted [in the restaurant] they cannot write that the sellers are [reliable] people, rather that everything sold in the store is kosher and under rabbinical supervision…" He continues, "This is a great merit for the honor of [God's] great Torah as [it] is something that will save thousands of souls from eating forbidden foods." *See* Responsa Iggrot Moshe, Yoreh Deah 52[a].

An almost identical question was posed in Israel to Rabbi Ovadiah Yosef (*See* Responsa Yabia Omer vol. 4, Yoreh Deah 7[b]). At the beginning of Section 7[b] it states:

> I was asked about a restaurant in which Jews eat, where the owner of the restaurant is willing to accept [kosher] supervision from the local rabbinate, so that the food in the restaurant will be kosher, and obey the directives of the supervisor regarding the kosher status of the food on the condition that the [kosher] supervisor ignore those who wish to eat dairy (ice cream) immediately after [eating] meat or even eat them together [uncooked]. Do we accept such a condition and thereby prevent the consumption of [non-kosher meat] and [the consumption of] actual meat and dairy together, or do we say let the wicked [fall and be punished for their actions]".

In the response of Rabbi Ovadiah Yosef he states, among other points:

> Ostensibly, we can say that the Rabbinate should not be lenient in their supervision of the restaurant's kosher status, so long as the [owner] does not agree to follow all the instructions [of the kosher supervisor] whether they relate to Biblical transgressions or Rabbinical ones… but here, there is rabbinical supervision upon all the food, [attesting to] its kosher status, and the fact that there may be individuals who wish to eat dairy after meat, [which the kosher] supervisor cannot prevent because of the freedoms that prevail in our country, has no bearing upon the kosher status of the food.

I note that later on in his response, Rabbi Yosef mentions that he agrees with the ruling of Rabbi Feinstein as stated in the aforementioned Responsa Iggrot Moshe.

Finally, I would also like to add that if the aforementioned honorable Rabbis have been able to adopt this more flexible approach for the purpose of attaining their main goal of ensuring the distribution of kosher food, even with regard to the issue of consuming dairy products after eating meat which, according to everyone, is [directly] connected to the laws of kosher, it is still further appropriate to consider a similar approach regarding issues unrelated to the kosher status of food and its preparation.

Needless to say, this consideration is brought forth as an afterthought, as our decision is binding by the force of judicial exegesis, as explained above.

4. As I have said, I agree with the decision of my honored colleague, Justice *Or*, that the temporary order is to be made permanent.

Decided upon the decision of Justice Or.

Today, 3 Sivan 5750 (May 27, 1990)