



C.R.P(MD).No.1058 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1058 of 2023

and

C.M.P(MD).No.4984 of 2023

A.Verson Kingsly

... Petitioner/Respondent/Petitioner

Vs.

1.The Kanyakumari CSI Diocese,
Rep.by The Bishop Rt.Rev.A.R.Chellaiah,
71A, Tennison street,
Nagarcoil 629001,Nagarkoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

2.The Election Officer,
CSI Church, Puthalam Post,
Puthalam Village,
Agasteeswaram Taluk,
Kanyakumari District.

3.The District Minister,
CSI Church, Puthalam Post,
Puthalam Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondent/Respondent/Respondent

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.3 of 2021 passed by the 2nd Additional Sub Court, Nagercoil, dated 07.02.2023 by reversing the fair and decreetal order passed in I.A.No.2 of 2021 in O.S.No.69 of 2021 by the Principal District Munsif, Nagercoil, dated 13.03.2021.



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For petitioner : Mr.A.Senthil Kumar
For R1 : Mr.R.J.Karthick

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order passed in C.M.A.No.3 of 2021 by the 2nd Additional Sub Court, Nagercoil, dated 07.02.2023 by reversing the fair and decreetal order passed in I.A.No.2 of 2021 in O.S.No.69 of 2021 by the Principal District Munsif, Nagercoil, dated 13.03.2021.

2.The petitioner herein is the plaintiff before the Principal District Munsif, Nagercoil, in O.S.No.69 of 2021. The suit was filed by the petitioner for the following reliefs:-

“RELIEFS

(A) Granting a decree for declaration declaring the order passed by the 1st defendant/Bishop, Kanyakumari CSI Diocese disqualifying the plaintiff from contesting the elections through the communication vide No:B/0288/2021 dated 26/02/2021 is null and void, unenforceable by law and not binding on the plaintiff.

(B) Granting a decree for permanent injunction restraining the defendants and their men, agent or anybody claiming under them from conducting any kind of election till disposal of the suit.

(C) Granting a decree for Mandatory injunction dierecting the 3rd defendant to accept the candidature filed by the plaintiff on 27/02/2021 along with the copy of review petition.



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(D) Such other reliefs that this Honourable Court deems fit and proper.”

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3.In the said suit, the petitioner had filed I.A.No.2 of 2021 for a injunction to restrain the respondents from holding election, scheduled to be held on 14.03.2021. The said application was filed by the petitioner on 03.03.2021 before the learned Principal District Munsif at Nagercoil. The learned Principal District Munsif, Nagercoil, by order dated 13.03.2021 i.e., one day before the proposed date of the election on 14.03.2021, allowed the interim application and directed the respondents to conduct election along with the petitioner for the CSI Church at Puthalam. The relevant portion of the order reads as under:-

“தீர்ப்பாணை உத்தரவு

1) 14.03.2021ம் தியதி புத்தளம் சி.எஸ்.ஐ ஆலயத்தில் நடைபெறும் தேர்தலில் மனுதாரர் போட்டியிடுவதற்கு தகுதிபடைத்தவர் என்று இந்நீதிமன்றம் அறிவித்து உத்தரவிடுகிறது.

2) மனுதாரர் இந்த தேர்தலில் போட்டியிடுவதற்கு அனைத்து ஏற்பாடுகளையும் எதிர்மனுதாரர்கள் செய்ய வேண்டும் என நீதிமன்றம் உத்தரவிடப்படுகிறது.

2021ஆம் ஆண்டு மார்ச் திங்கள் 13ம் நாள் என் கையொப்பமும் நீதிமன்ற முத்திரையும் இடப்பட்டது.”

4.Thus, the petitioner had also participated in the election and was elected to the post of Secretary in Puthalam Church, which is under the management of the first respondent herein. It appears that the petitioner had



also participated in the elections. During the previous period, he was elected as a Secretary for a period between 2018 to 2021. It appears that in the election for the period 2021 – 2024, the petitioner's nomination was being objected on the ground that the petitioner had contracted a second marriage which amounts to immoral turpitude and therefore, the petitioner was disqualified from contesting election. The respondents 1 and 2 herein filed an appeal in C.M.A.No.3 of 2021 against the order dated 13.03.2021 before the 2nd Additional Sub Court, Nagercoil. In the appeal before the said Court, the respondents 1 and 2 also added another ground stating that the petitioner was an employee of CSI Diocese, Kanyakumari between 1991-1999. The First Appellate Court has considered the oral objections of the respondents, however, interfered with the order of the learned Principal District Munsif Nagercoil on the ground that the relief, that was sought for by the petitioner, differed from the relief that was granted to the petitioner, and therefore, set aside the order passed in I.A.No.2 of 2021 on 13.03.2021. The relevant portion of the impugned order reads as under:-

'13.அடுத்தாற்போல் கீழமை நீதிமன்றம் கேட்டுள்ள பரிகாரத்தை விட கூடுதலாக பரிகாரம் வழங்கப்பட்டுள்ளது என்று ஒரு வாதம் முன் வைக்கப்பட்டது. இதனை பொறுத்து பார்க்கும்போது மனுதாரர் அவருடைய மனுவில், தான் மனு தாக்கல் செய்திருப்பதாகவும், அதன் காரணத்தினால் பிரதிவாதிகள் தேர்தலை நடத்தக்கூடாது என்று இடைக்கால தடை உத்தரவு கேட்டுள்ளார். ஆனால் கீழமை நீதிமன்றம் இந்த மனுதாரரையும் சேர்த்து தேர்தலில் பங்கு பெற அனுமதி வழங்கி தேர்தலை நடத்த உத்தரவிட்டுள்ளது. கீழமை



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நீதிமன்றத்தின் உத்தரவானது அவர் கேட்டுள்ளதை தவிர கூடுதலாக வழங்கியுள்ளது என்பதில் எவ்வித சந்தேகமும் இல்லை. ம.சா.ஆ.1 ஆவணத்தில் உள்ள விதி 58ஐ முழுவதுமாக கீழமை நீதிமன்றம் சீர்தூக்கி பார்க்காமல் மேற்படி உத்தரவை வழங்கியுள்ளது. கீழமை நீதிமன்றம் வழங்கியுள்ள உத்தரவை பொறுத்து பார்க்கும்போது எதிர்மனுதாரர் இந்த இடைக்கால மனுவில் கோரிய பரிகாரம் வழங்காமல் அவர் வழக்கில் என்ன பரிகாரம் கோரியுள்ளாரோ அந்த பரிகாரத்தை உத்தரவாக இடைக்கால மனுவில் வழங்கியுள்ளது ஏற்புடையதல்ல என்ற காரணத்தின் அடிப்படையிலும், கேட்டுள்ள பரிகாரத்தை விட கூடுதலாக பரிகாரம் வழங்கியுள்ள காரணத்தினாலும், கீழமை நீதிமன்ற உத்தரவு மற்றும் உத்தரவாணை நீக்கரவு செய்யப்படவேண்டியது என்று இந்நீதிமன்றம் முடிவு காண்கிறது.”

5. The learned counsel for the petitioner submits that in the election that was held on 14.03.2021, the petitioner was elected as a Secretary for a period of 3 years and the tenure comes to an end within another 8 months of time. The learned counsel for the petitioner further submitted that pursuant to the impugned order, the petitioner has been issued with the communication stating that one Mr.Ganarathinam has been appointed as a Secretary. It is submitted that the Trial Court is competent to mould the relief and therefore, the order that was passed by the Principal District Munsif, Nagercoil, in I.A.No.2 of 2021 on 13.03.2021 did not warrant any interference by the 2nd Additional Sub Court, Nagercoil.

6.The learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in the case of **Gaiv Dinshaw Irani**



and Others Vs. Tehmtan Irani & Others. A reference is made to the paragraphs 34 & 35, wherein it has been held as follows:-

“34. Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 of the Code of Civil Procedure and the same has been challenged by the appellants before us. In ordinary course of litigation, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire purpose of the suit the Courts taking note of the same should mould the relief accordingly. This rule is one of ancient vintage adopted by the Supreme Court of America in [Patterson vs. State of Alabama](#)[11] followed in [Lachmeshwar Prasad Shukul vs Keshwar Lal Choudhury](#)[12]. The aforementioned cases were recognized by this Court in [Pasupuleti Venkateswarlu vs. The Motor and General Traders](#)[13] wherein he stated that:

“...If a fact, arising after the lis has come to court and has a fundamental impact It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we



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contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.” The above mentioned principle has been recognized in a catena of decisions. This Court by placing reliance on the Pasupuleti Venkateswarlu Case (supra), held in [Ramesh Kumar vs. Kesho Ram](#)[14] that:

“6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a ‘cautious cognizance’ of the subsequent changes of fact and law to mould the relief.” This was further followed in [Lekh Raj vs. Muni Lal & Ors.](#)[15]. This Court in [Sheshambal \(dead\) through LRs vs. Chelur Corporation Chelur Building & Ors.](#)[16] while discussing the issue of taking cognizance of subsequent events held that:

“19. To the same effect is the decision of this Court in [Om Prakash Gupta](#) case where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied: (SCC p. 263, para 11) “11. ... (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;



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(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.” This Court in *Rajesh D. Darbar and Ors. vs. Narasinghro Krishnaji Kulkarni and Ors.*[17], a matter regarding the elections in a registered society, held that the courts can mould relief accordingly taking note of subsequent events. Furthermore, in *Beg Raj Singh vs. State of Uttar Pradesh & Ors.*[18] while deciding on the issue of renewal of a mining lease held that:

“....A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment.” Even this Court while exercising its powers under *Article 136* can take note of subsequent events (See: *Bihar State Financial Corporation & Ors. vs. Chemicot India (P) Ltd. & Ors.* [19], *Parents Association of Students vs. M.A. Khan & Anr.* [20], *State of Uttar Pradesh & Ors. vs. Mahindra & Mahindra Ltd.*[21])

35. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice.”



7. That apart, the learned counsel for the petitioner submits that the petitioner's nomination can be rejected only on the ground that the alleged second marriage was contracted by the petitioner during the subsistence of the first marriage with Hepsi Swarna Bai. It is submitted that the said objection has been also overruled by the learned 2nd Additional Sub Court, Nagercoil. It is submitted that the 2nd Additional Sub Court, Nagercoil has also overruled other objection regarding the petitioner's prior employment between 1991 – 1999 with the Diocese and therefore, the First Appellate Court ought not to have interfered with the order passed by the Principal District Munsif, Nagercoil. Hence, he prays for allowing the present Civil Revision Petition.

8. Per contra, the learned counsel for the first respondent would submit that the petitioner was found in leading immoral life and was therefore disqualified as per by-laws of the respondents. It is further submitted that though the Principal District Munsif, Nagercoil, has given a decision in favour of the petitioner, nevertheless, the decision of the First Appellate Court namely, the 2nd Additional Sub Court, Nagercoil, cannot be interfered with.



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9. In this connection, the learned counsel for the first respondent has placed reliance on a decision of the Hon'ble Supreme Court in the case of **Bachhaj Nahar Vs. Nilima Mandal & Another** reported in **2009 0 AIR (SC) 1103**. A reference is made to the paragraph 10 which reads as under:-

“10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”

10. The learned counsel for the first respondent has placed reliance on another decision of the Hon'ble Supreme Court in the case of **Mrs. Akella**



Lalitha Vs. Sri Konda Hanumantha Rao & Another reported in **2022 0**

AIR (SC) 3544. A reference is made to the paragraphs 15 and 16 which reads as under:-

“15.Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

16.In the case of Messrs.Trojan & Co.Ltd.v.Rm.N.N.Nagappa Chettiar AIR 1953 SC 235, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

11.I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.

12.The only ground on which the petitioner's nomination was rejected by the first respondent that the alleged second marriage that was contracted



during the subsistence of the first marriage. The candidature of the petitioner was rejected by the first respondent herein (3rd Defendant) on the basis of the legal opinion given by the learned Government Pleader. It appears that the petitioner had also filed a review petition before the authorities against the decision taken by the first respondent. However, the candidature of the petitioner was rejected without any basis.

13. On the other hand, the learned counsel for the first respondent in the written statement stated that the petitioner had illegal intimacy with his sister-in-law, namely, Vasantha and deserted his wife namely, Hebsi Sorwana Bai. It is submitted that the first wife filed IDOP.No.187 of 2007 stating that the petitioner was living in adultery with the said Vasantha and harassing her. The marriage was dissolved eventually on 06.04.2009. Even before the marriage was dissolved between the petitioner and the said Hebsi Sorwana Bai, the petitioner had begotten two children through the second wife namely, Vasantha. It is submitted that as per CSI Constitution, immoral life with the another woman was not allowed and therefore, the petitioner is not entitled for membership with the CSI Diocese, Kanyakumari. It is further submitted that the petitioner has suppressed these facts to become a member of the CSI Church, Puthalam Village.



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14.The further case of the first respondent is that the petitioner has violated Clause 18(2) of Chapter-II of the C.S.I Constitution. It is noticed that if a person got admitted by producing false records, his membership can be terminated and that all the members cannot contest in the CSI election.

15.The fact remains that the petitioner's membership was not terminated and therefore, the petitioner not only contested to the post of Secretary during the previous election period, but also participated in the election on 14.03.2021.

16.In my view, the Trial Court has correctly held that the petitioner can participate in the election on 14.03.2021 based on the available material. However, the respondents, instead of proceeding with the trial, chose to file an appeal before the 2nd Additional Sub Court, Nagercoil, in CMA.No.3 of 2021 which was culminated in the impugned order dated 07.02.2023. The period for the post of the Secretary, pursuant to the election held on 14.03.2021, will expiry on February 2024. At this stage, the respondents have now appointed another influential person namely, Gana Rathinavel.



17.The only question to be decided is whether the petitioner was entitled to participate in the election or not and on what ground, the petitioner's nomination was rejected. The petitioner had filed a review petition which was not disposed of in accordance with the provisions of law and thus, the candidature of the petitioner was rejected which led the petitioner to file a suit in O.S.No.69 of 2021.

18.In my view, a final determination as to the status of the petitioner can be taken only in the suit proceedings and not in the Appellate proceedings. Once the decision was taken to proceed with the election, there was no justification in interfering with the order stating that the order was beyond the scope of the prayer in the suit in the Interlocutory Application filed by the petitioner in I.A.No.2 of 2021. The Court has empowered to mould the relief at the interim stage. The Principal District Munsif, Nagercoil, had taken the view that the petitioner is eligible to participate in the election and the respondents shall make necessary arrangements for participation of the petitioner in the election. But, the respondent preferred an appeal in CMA.No.3 of 2021 which was culminated in the impugned order dated 07.02.2023 which cannot be sustained. No finality has been given in the status of the petitioner based on the interim order passed by the Principal District Munsif, Nagercoil.



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19. Therefore, this Civil Revision Petition is deserves to be allowed. It is accordingly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

24.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The 2nd Additional Sub Court,
Nagercoil.
2. The Principal District Munsif,
Nagercoil.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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