

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2016

DELIVERED ON : 15.12.2016

CORAM:

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.Nos.224, 226, 227, 211 and 212 of 2016

O.S.A.No.224 of 2016:

1. Dr.R.Jayakaran Issac
2. S.Armstrong
3. P.Amalraj ... Appellants
(On behalf of themselves and
members of the Church of South India)

Vs.

1. The Church of South India, Synod
rep. by its Moderator Most Rev.Dr.Dyvasirvatham
No.5, White's Road, Royapettah
Chennai - 600 014.
2. The Most Rev. Dr.Dyvasirvatham
The Moderator
Church of South India Synod
No.5, White's Road, Royapettah
Chennai - 600 014.
3. Rt. Rev. Thoma K.Oomen
Deputy Moderator
Church of South India Synod
No.5, White's Road, Royapettah
Chennai - 600 014.
4. Rev. Dr.D.R.Sadananda
General Secretary, CSI Synod
No.5, White's Road, Royapettah
Chennai - 600 014.
5. Adv.C.Robert Bruce
Treasurer, CSI Synod
No.5, White's Road, Royapettah
Chennai - 600 014. .. Respondents

PRAYER: Appeal under Order XXXVI Rule 1 of the Original

Side Rules read with Clause 15 of the Letters Patent against the fair and decreetal order dated 12.8.2016 passed in O.A.No.30 of 2016 in C.S.No.20 of 2016.

O.S.A.Nos.226 and 227 of 2016:

1. Dr.R.Jayakaran Issac
2. S.Armstrong
3. P.Amalraj .. Appellants
(On behalf of themselves and
members of the Church of South India)

Vs.

1. The Church of South India, Synod
rep. by its Moderator Most Rev.Dr.Dyvasirvatham
No.5, White's Road, Royapettah
Chennai - 600 014.
2. The Most Rev. Dr.Dyvasirvatham
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5. Adv.C.Robert Bruce
Treasurer, CSI Synod
No.5, White's Road, Royapettah
Chennai - 600 014.
6. H.Arthur Sadhanandhan
7. Shamgar Ravikumar Royall
8. D.Charles
9. Dr.Chandra Devanesan
- 10.C.Joseph Premanath .. Respondents

(Respondents 6 to 13 impleaded
by order dated 8.11.2016 passed
in C.M.P.Nos.17473,17475 and 17478 of 2016)
225,226 and 228/2016

- 11 K. Mansingh
- 12 D. Selvakumar
- 13 Dr. M.P. kalaiselvan

PRAYER: Appeals under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 12.8.2016 passed in A.Nos.343 and 344 of 2016 in C.S.No.20 of 2016.

O.S.A.Nos.211 and 212 of 2016:

- 1. K.Johnson David
- 2. J.Paul Nixon .. Appellants in 30th
(for themselves and as representatives the appeals
of Congregation Members of Church of
South India, Thoothukudi Nazareth
Diocese, Tuticorin)

Vs.

- 1. Church of South India, having office at
No.5, Whites Road, Royapettah
Chennai - 600 014
rep. by the Moderator Most Rev.Dr.G.Dyvasiravadam
S/o.Davamani.
- 2. Rev.Bishop Thomas Ooman
Deputy Moderator of Church of South India
having office at No.5, Whites Road
Royapettah, Chennai - 600 014.
- 3. Dr.Ratnakar Sadanandam
General Secretary, Church of South India
having office at No.5, Whites Road
Royapettah, Chennai - 600 014. .. Respondents in
(For themselves and as representatives of both the appeals
Synod Church of South India having office
as stated above)

PRAYER: Appeals under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 12.8.2016 passed in A.Nos.511 and 512 of 2015 in C.S.No.396 of 2015.

For Appellants in : Mr.M.K.Kabir, Senior Counsel
O.S.A.Nos. 224, 226 and 227 for M/s.BFS Legal
of 2016

For Appellants in : Mr.B.Kumar, Senior Counsel
O.S.A.Nos. 211 and 212 of for Mr.K.Chandrasekaran
2016

For Respondents in all the : Mr.V.Prakash, Senior Counsel
appeals for Mr.Adrian D.Rozario

COMMON JUDGMENT

THE CHIEF JUSTICE

Litigation does not even spare God, or rather the followers find avenues of litigation even in matters of religious affairs. This is across the board irrespective of the religion. Properties held by religious institutions and the power which flows from posts held, which are religious in character, seek to be the bane of this litigation.

2. The present case is also one where the members of the Church of South India are battling on the issue of the amendment to the Constitution of the Church of South India as also the mode and manner of election of the office bearers.

3. The preamble to the Constitution sets forth how the Church of South India came into being. It claims to be a part of One Holy, Catholic and Apostolic Church and a union of four different church traditions - Anglican, Methodist, Presbyterian and Congregational. It is also an autonomous Indian church and incidentally is not a registered body under any enactment. It is stated to have been formed immediately after the country gained independence.

4. The Membership of the Church of South India is of persons who are residents in four Southern States of India - Andhra Pradesh, Karnataka, Kerala and Tamil Nadu as also Jaffna in Sri Lanka, who have been baptized and are willing to abide by the faith and order of the church.

5. Chapter V of the Constitution deals with the Ministry of the Church and the ordained ministry of the church is to consist of Bishops, Presbyters and Deacons. Thereafter, the functions and responsibilities of each are provided. Rule 11 in this Chapter provides that every Bishop of a diocese will be the Ex-Officio Member of the Synod of the Church.

6. Chapter VI deals with the election, appointment, consecration and installation of Bishops, while Chapter IX deals with the Synod, which defines the Synod as the highest representative body of the Church of South India, its supreme governing and legislative body and the visible symbol of its unity. The Membership of the Synod is as under:

"Rule 2. Members

- (a) All diocesan bishops and assistant bishops, if any, and bishops serving the Synod in other duties within its jurisdiction;
- (b) The General Secretary and the Treasurer;
- (c) The President and the General Secretary of the Women's Fellowship and two members of the Order of Sisters nominated by the Order Committee;
- (d) Presbyters and lay persons representing the Dioceses and elected according to the following table:

For upto 10,000 baptised members - 2 presbyters and 4 lay persons

Above 10,000 but below 20,000 baptised members - 3 presbyters and 5 lay persons

For 20,000 and above but below 30,000 baptised members - 4 presbyters and 6 lay persons

For 30,000 and above but below 50,000 - 5 presbyters and 7 lay persons

For 50,000 and above but below 75,000 - 6 presbyters and 8 lay persons

For 75,000 and above but below 100,000 - 6 presbyters and 9 lay persons

For 100,000 and above but below 150,000 - 6 presbyters and 10 lay persons

For 150,000 and above - 6 presbyters and 11 lay persons

Out of the total representatives from the Diocese to the Synod at least 25% from among the Presbyters and at least 25% from among the lay persons shall be under the age of 35 years. Out of the total lay representatives from a Diocese to the Synod at least 25% shall be women.

(e) The Moderator shall appoint to the Synod in consultation with the other Officers of the Synod upto 10 persons as additional members of the Synod."

7. Rule 6 onwards deals with the Officers of the Synod and the relevant Rules under Chapter IX are being reproduced hereinunder:

"Rule 6. The Officers of the Synod shall be a Moderator, a Deputy Moderator, a General Secretary and a Treasurer.

Rule 7. All the officers shall be elected by ballot of the Synod, the Moderator and the Deputy Moderator being elected from among the diocesan bishops of the Church.

Rule 8. All the Officers shall be elected during each ordinary meeting of the Synod, and shall hold office from the close of that meeting till the close of the next ordinary meeting of the Synod. 'Provided that if any vacancy occurs, the Executive Committee shall fill up such vacancy subject to the approval of a majority of the members of the Synod which approval shall be obtained by circular vote'. (S.74:29) They shall be eligible for re-election for only one more term of 2 years consecutively.

Rule 9. The Moderator shall be the presiding officer of the Synod, and the Chairman of its Executive Committee. He shall be the official representative of the Church during his term of office in all business with other Churches or organizations."

8. The Synod is the supreme governing and legislative body of the Church of South India and the final authority in all matters pertaining to the Church as per Rule 13 and is also empowered to make rules, pass resolutions and take executive action as may be necessary from time to time for the general management and good governance of the Church and of the properties and affairs thereof.

9. So much for the Constitution to the extent it affects the present dispute.

THE FACTS:

10. The elections to the Synod were last held in January, 2014 and the tenure was for a period of two years, which was to expire in January, 2016. However, during November, 2015 certain amendments were brought into force in the Constitution effective from 16.11.2015, which effectively extended the tenure of the elected Members of the Synod by one year.

11. A suit came to be filed being C.S.No.20 of 2016 seeking to declare that the amendments to the Constitution of the Church of South India, including the amendments touching upon the age of retirement of Bishops and the term of office bearers of the Synod, have only prospective effect and not retrospective effect; with a further declaration that the term of the Executive Committee and elected officer bearers of the Synod will lapse on 13.1.2016; and a consequent relief of permanent injunction was also prayed for restraining the existing office bearers and Committee to continue in office beyond the said period.

12. However, the plaintiffs therein (appellants in O.S.A.Nos.224, 226 and 227 of 2015) were not able to obtain any interim relief. The new elections are due on 14.1.2017 and it is common cause in a sense that the prayers really have worked themselves out.

13. There is, however, an earlier suit also filed being C.S.No.396 of 2015 claiming the following reliefs:

a. Declaring that the proposed Constitutional amendments to the Constitution of Church of South India amending, introducing and altering of Chapter V Rule 112(a) extending the retirement age for the Bishops from 65 to 67, similarly Chapter V Rule 26 seeking to extend the age of retirement for Presbyter to 67 years, Chapter VII Rule 6 & 12, Chapter XI Rule 3, Chapter IX Rule 7, Chapter IX Rule 20 are violative, ultra vires, unreasonable and illegal vis-a-vis the provisions of the Constitution of CSI.

b. Consequently pass a decree of permanent injunction restraining the defendants from giving effect to the proposed Constitutional amendments.

c. Declaring the newly introduced bye-laws pertaining to Rule 7 under the headings 1. 'Procedure for the election of the Moderator 2. 'Procedure for the election of the Deputy Moderator' 3. 'Procedure for the election of the General Secretary and the Treasurer' 4. the

'Procedure for election of Treasurer of Diocese' and 5. in Rule 20 under the heading 'Honorary Presbyters' are violative, ultra vires, unreasonable and illegal vis-a-vis the provisions of the Constitution of CSI.

d. Consequently pass a decree of permanent injunction restraining the defendants from implementing and giving effect to the said bye-law."

Once again, no interim orders could be obtained.

14.1. On the issue of interlocutory relief, the interim applications have been dismissed by a common order dated 12.8.2016.

14.2. The learned Single Judge took note of Rules 20 and 27 of Chapter IX dealing with Synods, which read as under:

"Rule 20. An ordinary meeting of the Synod shall be held once in every two years at such time and place as the Executive Committee may determine. Special meetings of the Synod may also be summoned by the Executive Committee.

Rule 27. The quorum for a meeting of the Synod shall be one-third of the total membership of whom not less than two-thirds shall be lay persons."

14.3. The learned Single Judge also noticed on the basis of the pleadings and the documents on record that the Constitution was sought to be amended pursuant to the communication sent by the Synod to all the Bishops of the Church of South India on 14.4.2015 and thereafter set forth the amendments which were sought to be challenged.

14.4. The learned Single Judge also took note of the bye-laws made to the Constitution, stated to be for the first time after 70 years, and the relief sought that they should apply to the next elections.

14.5. The fundamental plea of the bye-laws being in furtherance of the Constitution and not in derogation thereof has been noticed with the contention of the plaintiffs that the fresh elections would have to be conducted based on the unamended provisions of the Constitution and by ignoring the bye-laws.

14.6. The plea advanced on behalf of the respondents was that the amendments had already been carried out by following the due procedure as also the enactment of the bye-laws. It was stated that 16 out of 22 Diocesan Councils have ratified the amendments and the requirement of two-third majority had been complied with.

14.7. The learned Single Judge while considering the principles of interim relief opined that the next elections were already due in January, 2017 and the suits had been filed only in representative capacity. Most of the Diocesan Councils had already ratified the amendments and the process of ballot still continues. No case for interim orders was made out and the applications were dismissed.

THE PLEAS:

15. In the appeals, the learned Senior Counsel for the appellants were conscious of the limitations of the scope of what could be urged given the factual scenario of the impending elections stated to be on 14.1.2017.

16. In the conspectus of these circumstances, only one aspect was urged before us during the course of arguments on 8.12.2016, i.e., whether the bye-laws can be said to be in any manner in derogation of the Constitution?

17.1. On behalf of the appellants, it was emphasized that the governing principles as contained in Rule 8 of Chapter II dealing with such Governing Principles envisages that the congregation has a role to play in the governance of the Church and there has to be democracy from grass-root level. The said Rule reads as under:

"Rule 8. Necessary Elements in the Life of the Church of South India -
The Church of South India recognizes that episcopal, presbyteral, and congregational elements must all have their place in its order of life, and that the episcopate, the presbyterate, and the congregation of the faithful should all in their several spheres have responsibility and exercise authority in the life and work of the Church, in its evangelistic and pastoral work, in its discipline, and in its worship."

17.2. The procedure for voting has been set out in Chapter VI, more specifically in Rules 22 to 40, which envisage nomination and secret ballot. The top administrator is the Moderator, followed by the Deputy Moderator, General Secretary and the Treasurer, who are elected from the Synod.

17.3. The contention, therefore, is that there are 406 Synod Members constituting the Electoral College to elect the Moderator and the Deputy Moderator from among 22 Bishops and thus, whichever Bishop gets a majority from the electoral college of 406 members would be declared elected as Moderator or Deputy Moderator. It was urged that, in fact, even post amendment to the Constitution there was no change in this behalf

and Rule 7 of Chapter IX - both existing and proposed are as under:

Existing	Proposed
7. All the officers shall be elected by ballot of the Synod, the Moderator and the Deputy Moderator being elected from among the diocesan Bishops of the Church	The Moderator and the Deputy Moderator shall be elected by the ballot of the Synod, from among the diocesan Bishops of the Church. The General Secretary and the Treasurer shall be elected by the ballot of the Synod.

17.4. The appellants, thus, urge that the amendment has left the Constitution untouched retaining the provision regarding the election of the Moderator and the Deputy Moderator.

17.5. Chapter XIII of the Constitution deals with alterations in the Constitution and Rule 3 reads as under:

"Rule 3. Power to make rules - Unless otherwise provided, the Executive Committee of the Synod shall have the right to frame rules, regulations and bye-laws for the operation of the provisions of this Constitution, subject to the approval of the Synod."

It was, however, pointed out that for almost 70 years there was no such bye-laws framed, which were now sought to be so framed.

17.6. The procedure for election of the Moderator, Deputy Moderator, General Secretary and Treasurer as provided in the bye-laws runs as under:

"Rule 7. Procedure for the Election of the Moderator

- a) On the first day of the ordinary session of the Synod or earlier, the Bishops shall meet as a Council for nominating a candidate for the office of the Moderator. They shall nominate one from among themselves (who is not due to retire during ensuring term) either unanimously or by a 2/3 majority.
- b) This name shall be presented to the Synod and if the Bishop thus nominated gets the affirmative votes of the majority members of the Synod he/she shall be declared as Moderator.
- c) If the Bishops' Council fails to propose one name, or if the Bishop nominated does not get majority affirmative votes in the Synod, the Bishop's Council shall choose two names by secret ballot among themselves and the Synod

shall elect one of them by a simple majority of votes.

- d) Moderator shall hold office till the close of the next ordinary meeting of the Synod.

Procedure for the Election of the Deputy Moderator

- a) The Deputy Moderator shall be elected by the Synod by the same process as that of electing the Moderator.
- b) The Deputy Moderator shall hold office till the close of the next ordinary meeting of the Synod.

Procedure for the Election of the General Secretary and the Treasurer

- a) The Synod Executive Committee shall constitute a Nomination Committee consisting of one Bishop, one clergy, three lay persons (of whom one should be a woman) for the posts of the General Secretary/the Treasurer. The Nomination Committee will bring name(s) before the Synod for the said posts.
- b) The Following are the desirable qualifications for the post of General Secretary:
 - (i) A person should not be less than 45 years
 - (ii) A person should have sufficient educational qualifications
 - (iii) A person should have sufficient administrative experience
 - (iv) A person should have capacity to relate to the partners and agencies of the World Ecclesial communion
 - (v) A person should have been a member of the Synod/Diocesan Executive Committee for at least one term.
 - (vi) A person should have integrity and Churchmanship.
- c) The following are the desirable qualifications for the post of Treasurer:
 - (i) A person should not be less than 45 years
 - (ii) A person should have sufficient financial administrative experience
 - (iii) A person should have sufficient knowledge of accounts, commerce and taxation laws
 - (iv) A person should have sufficient legal acumen to deal with the Companies Act, FCRA and taxation regulations.
 - (v) A person should have been a member of the Synod/ diocesan Executive committee for at

least one term.

(vi) A person should have integrity and Churchmanship.

- d) If the Nomination Committee brings in a name, the Synod will elect the General Secretary/the Treasurer by an affirmative vote.
- e) If the person nominated to the post of the General Secretary/ the Treasurer does not get majority affirmative votes in the Synod, the Nomination Committee shall bring another name (s) for affirmative vote.
- f) If the Nomination Committee should bring in more than one name, then the person getting majority votes will be elected to the posts of the General Secretary/the Treasurer.

17.7. It was, thus, contended by the appellants that these bye-laws have introduced a system of election in derogation of the Constitution. This plea is based on the fact that instead of the Moderator being elected by a majority of votes out of 406 Synod Members, a principle of only ratification of the Moderator as proposed by the Bishops is sought to be brought in place. Thus, the Bishops would meet and nominate one from among themselves either unanimously or by two-third majority subject to the condition that he is not due to retire in the ensuing term. Thus, though for such a nomination, an overwhelming mandate is required, the fact remains that the Synod would be confronted with either approving or disapproving the nomination made by the Bishops by a majority of votes. The result would be that if someone is not proposed by the Bishops despite a majority of the Synod Members wanting him to be the Moderator, the said person would have no chance.

17.8. The procedure for election of Deputy Moderator is to the same effect, which is stated to be contrary to the provisions of the Constitution.

17.9. Insofar as the General Secretary and the Treasurer posts are concerned, the Synod Executive Committee is to constitute a Nomination Committee consisting of one Bishop, one Clergy, three Lay Persons (of whom one should be a woman) and such Nomination Committee would bring forth the names before the Synod for the said posts. Once again, this is stated to be in violation of the Constitution as the 406 Members of the Synod would not have a say.

18.1. On the other hand, the respondents strongly opposed the plea advanced on behalf of the learned Senior Counsel for the appellants. Their first say is that they are not dealing with a registered body like a society and thus analogous

principles cannot apply. The Constitution is for dealing with the religious affairs and also provides for the election process, but what the bye-laws seek to do is to put a check and balance which are in consonance with the Constitution.

18.2. It was the contention of the respondents that the power of the Synod was in no manner curtailed and thus the right to election would be of the 406 persons. No doubt, the Bishops would meet before to nominate a person from among themselves either unanimously or by two-third majority. Such a nomination while sought to be put before the Synod, if it did not appeal to them, could be rejected by a simple majority. Thus, the final say was of the Synod.

18.3. The respondents also contended that the election has to take place from among the Bishops and thus as the religious heads, it was within their rights to nominate a person, who in turn would have to receive the ratification of the Synod and if he fails to do, then another two people have to be nominated by secret ballot, which would then be subject to the election by the Synod.

CONCLUSION:

19. We have given our thoughtful consideration to the matter.

20. We have to keep in mind that the Constitution is the governing book to facilitate the functioning of the Churches and provides a democratic process for elections to various office bearers. The Constitution itself provides the procedure for amendments and the documents placed before the learned Single Judge show that such amendment was made by following the procedure at least prima facie.

21. Similarly, the enacting of the bye-laws is also something which is enshrined in Rule 3 of Chapter XIII and there also prima facie view has been found that it has been made as per the procedure. In fact, both have received overwhelming mandate of 16 out of the 22 Diocesan Councils.

22. Thus, the question which arises for consideration is whether the procedure prescribed for election in the bye-laws so framed can be said to be in derogation of the Constitution in any manner?

23. We are of the view that the answer to this question would be in the negative.

24. The bye-laws do refer to the principle of nomination by

the Bishops from amongst themselves of the person who has to be elected as the Moderator and the Deputy Moderator. Similarly, for the General Secretary and the Treasurer also a Committee is constituted which would make the nomination, instead of Bishops nominating from amongst themselves. The Committee formed for nomination, in fact, is of a wider spectrum, including apart from Bishop, one Clergy and three lay persons, who bring the names before the Synod for the said posts and the vote is however with the Synod to elect the person. Thus, what is envisaged is a check before the elections.

25. The question would be whether this check would defeat the principle of secret ballot or franchise principle of majority in any manner?

26. Once again the answer would be in the negative for the reason that the final say is with the Synod. The election has to take place from amongst the Bishops, who in a religious hierarchy are at the highest level. They from amongst them would find a suitable person and that too by unanimity or a overwhelming majority of two-third. The matter does not end at this since the Synod would have to ratify the same by a simple majority. Thus, if a member of the Synod is not happy with the nomination, they have a right of rejection. In such eventuality, the matter would go back to the Bishops, who then would nominate two persons by a secret ballot for consideration by the Synod. The choice would then be with the Synod to elect by a simple majority. The final say thus remains with the Synod, but the collective wisdom of the Bishops as to who among them should be the Moderator has been given weightage. This cannot ipso facto be called a derogation of the Constitution, especially when the bye-laws have been approved, as also the amendment to the Constitution. The position would be the same in case of Deputy Moderator and the only difference for the posts of General Secretary and Treasurer would be that the nomination would be of the Committee which is, in fact, a more representative body as constituted.

27. We are thus of the view that prima facie the bye-laws cannot be said to be in derogation of the Constitution and thus for the coming election process both the amended constitution and the bye-laws as framed would apply.

28. We thus find no merit in the appeals.

29. These appeals are dismissed leaving the parties to bear their own costs.

30. It is, however, made clear that the expression of views herein above are only a prima facie view and would not prejudice

the trial in the suits.

Sd/-
Assistant Registrar

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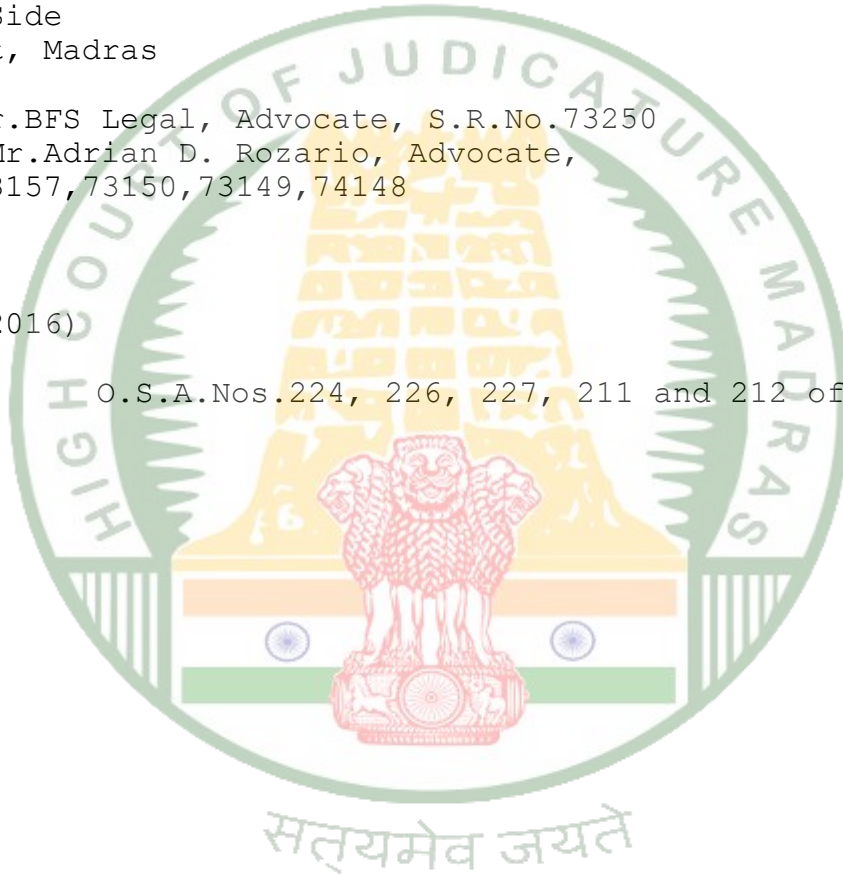
Sub Assistant Registrar

To
The Sub Asst. Registrar
Original Side
High Court, Madras

+2cc to Mr.BFS Legal, Advocate, S.R.No.73250
+20cc to Mr.Adrian D. Rozario, Advocate,
S.R.Nos.73157,73150,73149,74148

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O.S.A.Nos.224, 226, 227, 211 and 212 of 2016



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