

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.02.2017

Delivered on : 13.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYNARAYANAN

and

THE HONOURABLE MR. JUSTICE T.RAJA

Review Application Nos.4 and 5/2017 in LP.Nos.3&5/2015

Review Application No.4/2017 IN LPA.No.3/2015:-

S.Martin Devaraj	..	Review Petitioner / 12 th Respondent in LPA No.3/2015
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Versus

1.Rt.Rev.H.A.Martin Bishop, Tamil Evangelical Lutheran Church, Tranqubar House, Tiruchirappalli-620001.	..	Respondent / Appellant
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2.Tamil Evangelical Lutheran
Church, rep.By its Secretary Mr.E.D.Charles
Tranquebar House, Tiruchirappalli 620 001.

3.Dr.E.D.Charles Tamil Evangelical Lutheran Church Tranquebar House, Tiruchirappalli 620001.	..	RR 1 and 2
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4.D.Ravindran
 5.Rev.M.S.Arivannal
 6.Rev.D.Jesupatham
 7.Rev.J.Jesupillai
 8.Rev.D.Daniel Jayaraj
 9.Prof.P.M.Bhaskaran
 10.G.Prabakaran
 11.Rev.R.Valarmathy
 12.P.Vincent Rover

.. Respondents 3 to
 11

13.Mehar Antony
 14.E.lawrence
 15.G.Muthukrishnan
 16.M.Marthandam
 17.Justice K.Kanagaraj
 Administrator
 Tamil Evangelical Lutheran Church
 Tranquebar House,
 Tiruchirappalli-620001.

.. Respondents 13 to
 17

Review Application No.5/2017 in LPA.No.5/2015:-

S.Martin Devaraj

.. Review Petitioner /
 13th Respondent in
 LPA No.5/2015

Versus

1.A.Mehar Antony

.. Respondent /
 Appellant

2.Tamil Evangelical Lutheran
 Church, rep.By its Secretary Mr.E.D.Charles
 Tranquebar House, Tiruchirappalli 620 001.

3.Dr.E.D.Charles
Tamil Evangelical Lutheran Church
Tranquebar House, Tiruchirappalli 620001.

4.Rt.Rev.H.A.Martin
Bishop, Tamil Evangelical Lutheran
Church, Tranqubar House,
Tiruchirappalli-620001.

5. D.Ravindran

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12.Rev.R.Valarmathy

13.P.Vincent Rover

.. Respondents
1 to 12

14.E.lawrence

15.G.Muthukrishnan

16.M.Marthandam

17.Justice K.Kanagaraj

Administrator

Tamil Evangelical Lutheran Church

Tranquebar House,

Tiruchirappalli-620001.

.. Respondents
14 to 17

Common Prayer:- Review Applications filed against the common judgment

passed by this Court in LPA.Nos.3 and 5/2015 dated 07.12.2016.

For Review Petitioner in
both the Applications : Mr.S.K.Mani

For R17 / Judge
Administrator : Mr.R.Venkatachalapathy

COMMON ORDER

M.SATHYANARAYANAN, J.,

These review applications are filed by Mr.S.Martin Devaraj, who was arrayed as 12th and 13th respondent respectively in LPA.Nos.3 and 5/2015. The review petitioner seeks to review the common judgment dated 07.12.2016 made in LPA Nos.3 and 5/2015.

2 The affairs and administration relating to Tamil Evangelical Lutheran Church [TELC], Tiruchirappalli, is having a long and chequered career, leading to very many Court battles and also criminal prosecution.

3 The facts leading to series of litigations have been narrated in detail and in extension in the common judgment dated

07.12.2016 and for the sake of brevity, the facts are not narrated once again as it may lead to consumption of several hundred pages.

4 Though the review applicant raised very many grounds in these review applications, Mr.S.K.Mani, learned counsel appearing for the review applicant, on instructions, restricts his submission to Ground Nos.11 to 14 of the review applications and it is relevant to extract the same:-

"11 *Convening of a meeting is impossible. There is inconsistency looming large that if the Honourable Judge Administrator is given to believe that he is directed to convene the expired General Body, almost a moiety of the members who got unrepresented as the expired General Body [Synod] consists of member who paid subscription under the New Rule.*

12 *The Honourable Judge Administrator has been directed only to convene a General Body and not constitute a General Body. Even convening the Special General Body Meeting or convening the Special Synod it is meant that, either constituting General Body or constituting the Synod is altogether a New process of elections and nominations as adumbrated*

in the Rules either Old or New. Therefore, the Honourable Judge Administrator cannot begin the exercise of constituting a Synod or General Body until and otherwise the core question is whether the members who have paid the subscription as per the New Rules have to be brought into the exercise of constitution of a General Body or the members who have paid or to pay the Subscription under the Old Rule have to be addressed by the Honourable Judge Administrator in the matter of constitution of the Synod or General Body.

13 *If a Synod is to be constituted under the Old Rules, the Subscription has to be followed as per the Old Rule and if the Special Synod or General Body has to be constituted as per the New Rule, the subscription has to be followed under the New Rule and in each case, one moiety of the members would be excluded and the meeting could not be a full representation of the TELC Church Society either way and the purpose of the direction of this Honourable Court would be lost.*

14 *It is important to note that if the members are directed to complete the payment of subscription under the Old Rule, then the members who have paid*

the subscription under the New Rule being available, can be tacked on to the Constitution of the Synod under the Old Rule.”

5 It is the primordial submission of the learned counsel appearing for the review petitioner that as per the Old Bye-Laws/TELC Rules, 1991, the subscription payable is very minimal and most of the members are hailing from low income group and on account of the economic conditions, they were unable to pay the subscription amount on time and he would further contend that the learned Judge Administrator, for the purpose of convening the Extraordinary General Body Meeting in accordance with the New Rules/Bye-Laws, insists upon the members to pay the subscription as per the Amended Bye-Laws and the same is impermissible and in that event, very many of them are ineligible to participate the said Meeting and exercise their right to have a say as to the continuance of Old Rules/Bye-Laws or to adopt the New Rules/Amended Bye-Laws to run the administration and affairs of TELC and it would definitely lead to disaster consequences and it is not also not good for TELC which is more than 300 years old and therefore, prays for adoption of the old Rules/Bye-Laws insofar as collection of subscription is concerned.

6 Mr.R.Venkatachalapathy, learned counsel who accepts notice on behalf of the learned Judge Administrator would submit that a very meager amount has been prescribed towards subscription as per the Amended Bye-law and the subscription fixed under the New Bye-law is also meager considering the passage of time and the present trend and in any event, the funds collected by way of subscription are going to the Pastors of TELC, which may definitely benefit the Institution. It is the further submission of the learned counsel appearing for the learned Judge Administrator that the present review applications are filed only to prolong the proceedings and prevent from taking a decision as to the adoption of the old Rules/fundamental Bye-Laws or New Rules/ amended Bye-Laws, since 75% of the work has already been completed and any alteration or modification for reviewing the impugned common judgment would further prolong the process and may once again lead to very many litigations and prays for dismissal of these review applications.

7 This Court paid its anxious consideration and best attention to the submissions made on behalf of the review applicant and the learned Judge Administrator.

8 Chapter VIII of old Rules / Bye-Laws deals with the funds of the Church. It is relevant to extract the same:-

164:-CHURCH FUND:-

[1] *All earning members of the Church, men and women, shall contribute to the church Fund at the rate of 5 paise per rupee on their salaries. This shall be paid to the Pastorate wherein they reside. Only those who pay the contribution regularly, and subject to the rules herein before mentioned shall be eligible to vote and to get elected to any of the Administrative Committees and Councils of the Church.*

NOTE

- 1** *Salary for Church Fund purpose shall mean basic pay.*
- 2** *In cases where the members pay their monthly contributions to the Church Fund through Church Institutions, it shall be the responsibility of such Institutions to ensure that their contributions are remitted to the pastorates in which they reside.*

[2] *The Church Fund contributions of Pastors in active service, Missionaries and Candidates shall be according to the above rate. It shall be sent*

to the Central Treasury to be credited to the General Pastoral Fund. They shall however have all voting rights and other rights as members in the Pastorate wherein they reside. The Church Fund contributions of Pastors not in active service, and retired Pastors shall be according to the above rate and it may be paid to the General Pastoral Fund, or to their local Church, according to the wishes of the individual concerned. They shall have all voting rights and other rights, as members of the Pastorates wherein they reside, except the rights to stand for elections.

[3] *Members on regular salaries or pension shall pay according to the amounts they receive. Where salary and pension are received, the contribution shall be for the total amount. If they have other extra income, it is optional for them to pay for that amount also. No one shall be called a defaulter because he or she does not contribute to the Church Fund for the extra income.*

[4] *It is optional for the members to contribute to the Church Fund for the management share of the Provident Fund amount they receive at the time of retirement.*

[5] *Members with an income exceeding Rs.1,600/- p.m., shall pay at the rate of 5 paise to the rupee upto Rs.1,600/-. Payment of contribution for any amount above Rs.1,600/- is left to their option.*

[6] *Land-owners and others who are earning their livelihood from cultivation of their land, shall pay contribution to the Church Fund at the following rates:-*

[a] *Those owning or taking on lease, land up to 3 acres Rs.15/-p.m.*

[b] *Those owning or taking on lease, land exceeding 3 acres Rs.40/-p.m. They will have the option to pay to the Church Fund annually also after the Harvest, i.e, before the 31st of May, every year. As regards those who choose to pay to the Church Fund annually instead of monthly, in case of new members, only those who have paid their Church Fund atleast for two years before a P.Conference shall be entitled to vote in that P.Conference. In the case of others, all those who had paid their annual contributions towards the Church Fund due upto May of the year, before the time limit prescribed in Rule 63, shall be entitled to vote in the P.Conference held subsequently, upto 31st May of the succeeding year.*

[7] *All those who are engaged in business or in other employment which do not get them a regular and fixed monthly income, shall declare their average monthly and pay their contribution to the Church Fund at the rate of 5 paise per rupee on the declared income in the case of those drawing income from business or petty employments which does not get them a regular or a fixed monthly income, the monthly contribution payable to the Church Fund shall not be less than the rates prescribed below:*

[a] *Those who are engaged in petty trades and those who are engaged in petty employment which does not get them a regular or a fixed monthly income A&B Class Rs.10/-, C Class Rs.5/-.*

[b] *Those who are engaged in business, and have not been assessed to income tax in the previous year – Rs.100/-p.m.*

[c] *Those who are engaged in business and have been assessed to income tax in the previous year – Rs.200/-p.m.*

[8] *Those with an average monthly income of Rs.24/- or less, may contribute to the*

Church Fund at the rate of 2 paise per rupee of their income.

[9] *Where one has an income from immovable property in another pastorate, he shall pay Church Fund for that amount to the Pastorate where he resides or to the pastorate where the property is located. In the latter case, he shall show to the Pastorate where he is exercising his vote, the receipt of the amount paid.*

[10] *Widows receiving pension are not bound to pay Church Fund.*

[11] *Where the earning member of the family is a non-Lutheran, the other spouse if she or he is a Lutheran, even if not earning shall pay some contribution to the Church Fund.*

[12] *Any member of the Church may pay his/her Church Fund contribution to the Central Treasury. Such a member shall not have any voting right, but will not be liable to the penalties attached to non-payment of Church Fund."*

9 In the General Body Meeting held on 9th and 10th November 2011, amendments have been proposed to the Bye Laws of TELC [see meeting particulars in the typed set] and it is relevant to extract the same:-

<i>Sl. No</i>	<i>Rule No.</i>	<i>Existing Rules</i>	<i>Proposed Amendments</i>
1	J[5]	To be a voting member of the pastorate conference [P.Conference} one should pay Church Fund, in ones name at the rate prescribed subject a minimum of Rs.40/- per month in 'A' Class adn Rs.30/- in 'B' Class pastorates and Rs.15/- per month in 'C' Class pastorate.	<u>5]Classification of Members:-</u> <u>[a]Basic Members:-</u> having right of vote. [i]Communicant members who are 18 years of age. [ii]Who contribute subscription at the rate of Rs.100/- per month. [iii]Who have paid subscription at the prescribed rate regularly for 2 years. Payment within the period of 2 years should have been made without arrears for more than 3 months. [iv]Who permanently resides with in the jurisdiction of the pastorate. <u>[b]Full Members:-</u> having right to contests [to be voted upon] [i]Communicant members who have completed 28 years of age. [ii]Who contribute subscription at the rate of Rs.300/- per month. [iii]Who have paid subscription at the prescribed rate regularly for 3 years. Payment of subscription

<i>Sl. No</i>	<i>Rule No.</i>	<i>Existing Rules</i>	<i>Proposed Amendments</i>
			with in the period of 3 years should have been made without arrears for more than 3 months. [iv]Who permanently resides within the jurisdiction of teh pastorate.
2	J[6]	Village [as declared in Government records] congregation members other than salaried people are eligible to become if they pay Rs.5/- per month or Rs.60/- per annum. A new member should have paid his/her church fund contribution regularly for 2 years, before he/she is included in the voters list. There shall not be any accumulation of arrears for more than 6 months at any time.	First para to be deleted. The 2nd para in the Rule to be retained as Rule [6]. j[6] A new member should have paid his/her subscription regularly for 2 years, before he/she included in the voters list. There shall not be accumulation of arrears of subscription for more than 3 months at any time.
3	J[7]	Payment of Church fund within the period of 2 years referred to above should have been made in such a manner that there was no accumulation of arrears for more than 6 months at any time. A new member who complies with the rules will be society member as long he is in the jurisdiction. His/Her membership has to be renewed as per the Church Rules in force as new member, if he/she has not paid the contribution to church fund during his/her absence from the TELC area.	J[7] A new member who complies with the rules will be a member of the society as long as he is within the jurisdiction. His/Her membership has to be renewed as per the Bye-Laws for a new member if he has not paid the subscription during his absence from the TELC area.
4	Rule Nos.J[8] to [19]	8]All earning members of the Church, men and women shall	Except Rule No.9[b] all other rules to be deleted.

<i>Sl. No</i>	<i>Rule No.</i>	<i>Existing Rules</i>	<i>Proposed Amendments</i>
		contribute to the Church Fund at the rate of 5 paise per rupee on their salaries. This shall be paid to the Pastorate wherein they reside. Only those who pay the contribution regularly, subject to the rules herein before mentioned shall be eligible to vote, or to get elected to any of the Administrative Committees and Councils of the Church.	Rule 9[b] to be retained as Rule [8]
5	K[2]	[2]A defaulter in Church Fund contribution shall not be included in the Voters' List till he/she has paid all his/her arrears, If for any reason he/she is not able to pay his/her arrears, he/she may apply to the DE for condonation of the arrears through the PC. The DE may condone the arrears either in part or in full. Where he/she has to pay a part, he/she shall not have a vote, until that part is paid.	[2] A defaulter in subscription shall not be included in the Voters' List till he/she has paid all his/her arrears.

10 As per the Amended Bye-Laws, 2013 of TELC, General Body means sovereign and legislative body consisting of elected representatives from Pastors and all the aiding Pastorates in TELC.

11 Chapter V deals with the General Body of the Society and Sub Rule 9 speaks as to when Meeting of the General Body is to be

called. Sub Rule 24 speaks about the functions of the General Body and Sub Rule 25 speaks about the Extraordinary General Body Meeting.

12 This Court, in the impugned common judgment dated 07.12.2016, which is the subject matter of review in these applications, had recorded a finding rendered by the Hon'ble Supreme Court of India in the decision reported in **2015 [2] SCC 121 : 2015 [1] LW 289 [H.A.Martin and others Vs. Moses Thambidurai and others]** that the Tamil Nadu Societies Registration Act, 1975, is not applicable to TELC at all and granted an opportunity to the 2nd respondent to pursue such a remedy under law *de hors* the said Act. In the light of the said judgment, the provisions of the Tamil Nadu Societies Registration Act, 1975, are made inapplicable to TELC and therefore, as on date, no Statute would govern the affairs of TELC except the Rules/Bye-Laws. The Registrar of Societies having found that the Old Rules/Bye-Laws are not in consonance with the provisions of the Tamil Nadu Societies Registration Act, 1975, called upon TELC to suitably amend their Bye-Laws/Rules in tune with the provisions of the above cited Act and accordingly, the Amendments have also been proposed. This Court, in paragraphs 92 and 93 of the impugned common judgment, has also recorded the fact that it is not brought to the

knowledge of the Court as to whether the District Registrar of Societies, Tiruchirappalli, had approved the Amendments or not and that the typed set of documents in Volume-I [a] filed by the respondents 1 and 2 in LPA.Nos.3 and 5/2015 does not contain any document as to the approval of the Amended Bye-Laws. This Court, taking into consideration the core issue or dispute between the rival factions as to the adoption or following the old Rules/Bye-Laws or New Rules or Amended Bye-Laws and also the development happened on account of the above cited judgment of the Hon'ble Supreme Court of India, thought fit, to leave it to the wisdom of the General Body to take a call or decision as to the continuance of the old Rules/Bye-Laws or adoption of New Rules/Amended Bye-Laws or adoption of New Rules / Amended Bye-Laws to run the administration and affairs of TELC, as it is the only practical solution available.

13 Insofar as the subscription is concerned, the amount fixed appears to be very low and New subscription sought to be collected, considering the nature and living and economic development and inflationary trend, cannot be said to be very high or incapable of being paid.

14 The learned counsel appearing for the review applicant have not placed any material to substantiate/sustain his arguments as to the poor economic background of the members.

15 It is also pertinent to point out at this juncture, that the arguments on the quantum of subscription sought to be collected have been advanced for the first time before this Court. It is also brought to the notice of this Court that so far no challenge has been made to the impugned common judgment passed in LPA Nos.3 and 5/2015.

16 It is well settled position of law that the power of review can be exercised when there is an error apparent on the face of the proceedings and it must be an error which is based on clear ignorance or disregard to the provisions of law. Such error is an error which is a patent error and not a mere wrong decision [**AIR 2000 SC 1650 [Lily Thomas & Others Vs. Union of India]**].

17 In **AIR 1996 Mad 411 [Shanmugam Servai Vs. P.Periyakaruppan Servai]**, it is held that "it is not only a discovery of

new important materials or evidence, that would entitle a party to apply for review but the discovery of any new material or evidence and important matter must be one which was not within the knowledge of the party when the decree was made. The person seeking a review should prove strictly the diligence which he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly, conclusive. Mere and bare assertion in the affidavit that the party could not trace the documents earlier or he was not in possession not in custody of said documents is not a ground at all to seek legal aid provided under the Rule."

18 In ***AIR 1996 Mad 252 [Kandasamy Vs. Rathinambal and 5 others]***, it is held that "if a patent error or mistake of law causing total miscarriage of justice in a judgment or order passed by a Court of law is well identified and for other sufficient reasonings clearly spelt out, under Order 47 Rule 1 of CPC, an aggrieved party can seek the relief of review of the said order or judgment."

19 In ***AIR 2004 Mad 512 [B.Dhanalakshmi Vs. M.Shajahan & others]***, it is held that "the power of review is available

only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 CPC., may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised for an erroneous decision to be "re-heard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strike one on mere looking at record and would not require any long drawn process of reasoning on points, where there may be conceivably be two opinions."

20 The power of review may not be exercised on the ground that the decision was erroneous on merits and that would be the province of the Court of Appeal and it cannot be exercised to substitute a view. Under Order XXXVII Rule 1 of the Code of Civil Procedure, the error contemplated must be such that it is apparent on the face of the record and not an error which is to be fished out and searched.

21 The review applicant under the guise of review, seeks to raise a new issue and altogether a different point and in the considered opinion of the Court, the power of review cannot be exercised in the above said circumstances.

22 The learned Judge Administrator shall also ensure fair and transparency in conducting the General Body Meeting to decide the above said issue and shall make every endeavour to have wider participation of the members so that the issue can resolved amicably without leading to any acrimony or fresh round of litigations.

23 In view thereof, the review applications are dismissed subject to the above observation. However, in the circumstances of the case, there shall be no order as to costs.

[M.Sathyanarayanan, J.,]

[T.Raja, J.,]

13th March 2017

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