



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.05.2017

Delivered on : 30.05.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
The HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

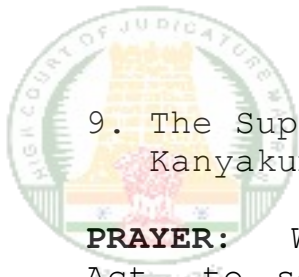
W.A.(MD)No.540 of 2017 and
C.M.P.(MD)Nos. 4539, 4540 & 4541 of 2017

R.Issac Robi

... Appellant/Petitioner

Vs.

1. The Secretary to Government,
Higher Education,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
2. The Secretary to Government,
School Education,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
3. The Director of Collegiate Education,
College Road, Chennai - 6.
4. The Director of School Education,
College Road, Chennai - 6.
5. The Joint Director of Collegiate Education,
Tirunelveli Region,
Gandhi Nagar, Tirunelveli.
6. The Moderator,
CSI Synod, No.5, Whites Road,
Royapettai, Chennai - 14.
7. Rt.G.Devakadatcham
Now functioning as Bishop,
Correspondent & Secretary,
NNCC College,
Marthandam CSI Institute of Technology,
Thovalai, Kanyakumari District.
8. The Administrative Committee,
CSI Diocese,
Nagercoil, Rep. by Administrative Secretary,
A.J.Bensam.



9. The Superintendent of Police,
Kanyakumar District @ Nagercoil.

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act, to set aside the order dated 10.05.2017, made in W.P.(MD) No.8852 of 2017, on the file of this Court.

Prayer in WP(MD). 8852/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents 1 to 5 not to allow 8th respondent herein from implementing notice dated nil published by 8th respondent in their official magazine Desopakari in May 2017 cancelling the proposed election for the office bearers to the CSI Kanyakumari Diocese scheduled on 25, 26 & 27.5.2017 and consequently appoint a Honourable Former Judge of this Honble Court as Election officer to conduct an election for the office bearers to the CSI Kanyakumari Diocese as per the constitution & Rules of CSI Kanyakumari Diocese for the term commencing from the date of assumption of office of office bearers with suitable directions to the 9th respondent for sufficient police protection.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel
for M/s.Veera Associates
For Respondents : Mr.T.R.Janarthanan (for R1 to R5 & R9)
Additional Government Pleader
Mr.Selvaraj (for R6)
Mr.Issac Mohanlal, Senior Counsel
for Mr.F.Deepak (for R7)
Mr.G.R.Swaminathan
for Mr.T.Chandrasekaran (for R8)

JUDGMENT

The appellant has come up with the present Writ Appeal under Clause 15 of Letters Patent Act, to set aside the order dated 10.05.2017, made in W.P.(MD)No.8852 of 2017, on the file of this Court.

2.The case of the Appellant is that he filed Writ petition in W.P.(MD)No.8852 of 2017 praying for a direction to the respondents 1 to 5 not to allow the 8th respondent herein from implementing notice dated Nill published by the 8th respondent in their Official Magazine "Desopakari" in May 2017 cancelling the proposed election for the office bearers to the CSI Kanyakumari Dioceses scheduled on 25, 26 & 27.05.2017 and consequently appoint a Hon'ble former Judge of this court as Election officer to conduct an election for the office bearers to C.S.I Kanyakumari diocesan as per the constitutions and rules of C.S.I Kanyaumari diocese for the term commencing from the date of assumption of office bearers with



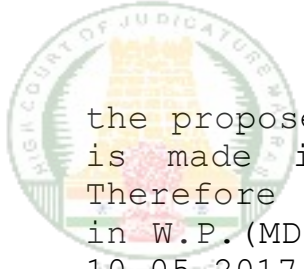
suitable directions to the 9th respondent for sufficient police protection.

3. It is the contention of the appellant/petitioner that he is one of the elected members of the diocesan council of Kaniyakumari. The CSI Kanyakumari diocese is one amongst the 24 diocese started several years ago with the noble object and purpose of both educational and religious activities. The Kanyakumari diocese is a religious body governed by the Constitution and Rules 1960 of CSI Kanyakumari diocese.

4. The 6th respondent is the Administrative Head of the said 24 diocese and the electoral college of the 24 diocese constitute an apex body called Synod. The moderator, the 6th respondent herein is the spiritual Head of synod and he has all powers to control, regulate and pass suitable orders in the eventuality of inability to implement the Rules of diocese. The office bearers of the CSI Kanyakumari diocesan council are being elected from 719 numbers of churches including the District Churches, Pastorate Churches and Branch Churches. Now for 40 District Churches out of 41, the members eligible to vote in the next election of committee members and Board members were finalized and hence election process for the entire district churches have already been over and the diocesan election is required to be conducted on or before the expiry of outgoing team of executive and board members.

5. Whereas the term of office of erstwhile executive committee expired on 31.05.2015 and the new Council has to commence its function from 01.06.2015 for a period of 3 years. In one amongst District Churches viz Kodioor District Church election was declared as per the rules. However, there arose an election dispute and the suit in O.S.No.9 of 2016 came to be filed on the file of the Principal Sub-Court, Nagercoil. In the said suit an injunction application was filed to stay the diocesan election and the same was dismissed by the Learned Trial Judge. Therefore, there is no legal impediment to on go with election process of diocesan council of CSI Kanyakumari. Accordingly the eligible voters list was finalized and about 1028 members were found to be eligible as voters. Though the Electoral College is ready and the eligible voter list is also finalized, the 7th & 8th respondent is not ready to conduct the election. In one way or other the 7th & 8th respondent are not conducting the election. In the meanwhile in the month of March 2017 and April 2017 in Appellant's religious magazine "Desopakari", it was published that the elections are being proposed to be conducted on 25th, 26th and 27th of May 2017.

6. Being so, recently a notice was published in the official magazine of diocese "Desopakari" that the proposed elections stand cancelled. The respondents 6 to 8 ought not to have cancelled the proposed elections, moreover the respondents 1 to 6 ought not to have allowed the respondents 6 to 8 to cancel



the proposed election. The said act of the cancelling the election is made in contrary to the order made by the Civil Court. Therefore the appellant herein has filed the above writ petition in W.P.(MD)No. 8852 of 2017. However, this Court vide order dated 10.05.2017 holding that a writ petition is not maintainable against a private party has dismissed the appellant's writ petition. The order made is in total regardless of the fact a Writ will always lie against the diocese, since diocese is discharging public duty and receives grant from the Government to the tune of several crores. That apart it also administers and run several aided educational institutions and hospitals, with addition to that there are about 25,000 students studying in the aided institutions of Kanyakumari diocese and several hundred teachers, non-teaching staffs are also working therein. But without appreciation of the above fact, this court has dismissed the appellant's writ for want of maintainability. The said order is impugned herein.

7. Heard Mr.Veerakathiravan, learned Senior Counsel appearing for the appellant, Mr.T.R.Janarthanan, learned Additional Government Pleader appearing for R1 to R5 and R9, Mr.Selvaraj, learned counsel for R6, Mr.Isaac Mohanlal, learned senior counsel appearing for R7 and Mr.G.R.Swaminathan, learned counsel for R8.

8.The Learned Senior Counsel for the appellant/petitioner at the outset has drawn the attention of this court to the judgment reported in **2009 (4) CTC 401, in the case of the Governing Council of American Collage, represented by the Principal and Secretary and others -Vs- The Director of Collegiate Education and others** and contented that the writ petition is maintainable as against the society and the issue relating to the diocese is amenable to writ jurisdiction since it is receiving aid from the state government.

9.Further it was submitted that as per the dictum laid down vide Para 21 in the above Judgment, this court is having power under Article 226 (1) to issue direction, orders, or writs to (any person or authority). In this regard it would be useful to extract Para 21 of the Division Bench Judgment referred above,

"21. At the outset, we wish to point out that the objection to the maintainability of the writ petition on the ground that the institution is a society, does not hold water any more, Article 226 (1) empowers this court to issue directions, orders or writs to "any person or authority" therefore even a society is amenable to the writ jurisdiction provided there is an element of public duty. In Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jeyanti Mahotsav Smarak Trust Vs V.R.Rudani, 1989 (2) SCC 691, a trust registered under the Bombay Public Trust Act, was held amenable to the writ jurisdiction. It was held therein



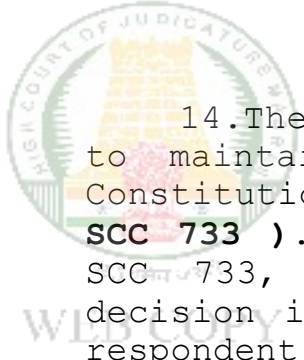
that when public money is paid as Government aid, the aided institutions discharge public and they become subject to the Rules and regulations of the Affiliating University. Therefore, the Supreme Court opined that employment in such institutions is not devoid of any public character. Again in **K.Krishnamachayulu -Vs- Sri Venkateswara Hindu College of Engineering, 1997 (3) SCC 571**, the Supreme Court held a writ filed even by the employees of unaided private educational institution as maintainable on the ground that the teachers get an element of public interest in the performance of their duties. Hence the contention that a writ against a society is not maintainable, cannot be accepted as of universal application, especially since the institution in question in these appeals, receives grant-in-aid-aid from the Government".

10.The Learned Senior Counsel emphasised the above said Division Bench judgment and argued that writ against the society is maintainable, when the institution in question receives grant-in-aid from the Government.

11.The Learned Senior Counsel Mr. Issac Mohanlal appeared for the respondent No.6 has represented that the writ petition cannot be maintainable, since it pertains to dispute of conducting election in the diocese. Therefore he prayed for the dismissal of writ appeal.

12.The following question arises in the writ appeal after hearing of arguments of both sides. Whether writ jurisdiction is maintainable against CSI Kanyakumari diocese or not?

13.At this juncture it would be relevant to refer to an earlier decision of this court dated 03.04.2014 in **W.A (MD) 212 of 2015 & W.A (MD) 335 of 2015 in the matter of S.D.K. Rajan Vs Jeddiya Sathya**, whereby after an elaborate discussion about the structure, composition and functioning of a dioceses has clearly vide para 27 held that always an election proceeding with regard to the Dioceses is not amenable under Article 226, whereas such election dispute will serve only as the subject matter of a civil court. Furthermore the petitioner has also sought "an order of interim injunction restraining the respondents 6 to 8 from in any manner disqualifying the petitioner and Ex-communicating the elected diocesan council" and further he also levels allegation that the meetings of the Diocesan are not being conducted regularly. With regard to the appellant's prayer and the allegation, this court is of the view that the question as to who could be permitted to attend meeting and who could not be allowed is something that could be gone into only before a civil court and his fear of expulsion can only be decided in the Civil Court.



14. The Hon'ble Supreme Court elaborately discussed with regard to maintainability of writ petition under Art. 226 of Indian Constitution in **Federal Bank Limited -Vs- Sagar Thomas (2003 10 SCC 733)**. In **Federal Bank Limited -Vs- Sagar Thomas, (2003) 10 SCC 733**, the Supreme Court explained and distinguished the decision in **Anadi Mukt** case (cited supra). In that case, the 1st respondent who was working as a Branch Manager in the appellant Bank was charge sheeted and ultimately awarded punishment of dismissal. The 1st respondent challenged his dismissal by filing a writ petition before the High Court. A preliminary objection to the maintainability of the writ petition was taken by the appellant Bank saying that it is a private bank and not a State or its agency or instrumentality within the meaning of Article 12 of the Constitution, hence, a writ petition under Article 226 of the Constitution was not maintainable against it. The learned single Judge, however, found that the Federal Bank performs a public duty, and as such it comes under the definition of other authority within the meaning of Article 226, and as such the writ petition was maintainable. Aggrieved by the aforesaid judgment of the learned single Judge, the appellant preferred a writ appeal. The said writ appeal was dismissed providing that the learned single Judge shall decide the writ petition on merits. The question which fell for consideration before the Supreme Court on appeal was as to whether the appellant Bank is a private body or falls within the definition of the State or local or other authorities under the control of the Government within the meaning of Article 226. Allowing the appeal, the Court held that a private company carrying on banking business as a Scheduled Bank, cannot be termed as an institution or a company carrying on any statutory or public duty. Mere regulatory provisions to ensure that commercial activity carried on by private bodies work within a discipline, neither confer any status upon the company nor put any obligation upon it which may be enforced through issuance of a writ under Article 226. It was merely a case of disciplinary action being taken against its employee by the appellant Bank. The respondent was not trying to enforce any statutory duty on the part of the Bank. The termination of service, therefore, cannot be challenged by the respondent by filing a writ petition under Article 226.

15. The diocese is a private body but not discharging any public duty. The appointments of the staffs of the institution by the diocese and receiving funds from the government under minority aided schemes are different from the internal election dispute. In the present case the petitioner is seeking a prayer to issue Writ of Mandamus by directing election to the diocese is not at all maintainable and no such direction can be given to the private individual by invoking extraordinary power conferred to this court under Article 226 of the Constitution of India. The diocese is a private body not discharging public duty and internal disputes between two groups with regard to the administrative dispute

cannot be resolved in this writ petition.

16. For the foregoing reasons, we are of the considered opinion that the writ petition is not maintainable under purview of Article 12 of Constitution of India and there is no irregularity and infirmity in the order passed by the Learned Single Judge. Therefore the present writ appeal deserves to be dismissed.

17. In the result the writ appeal is dismissed, however there is no order as to cost. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

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5. The Joint Director of Collegiate Education,
Tirunelveli Region,
Gandhi Nagar, Tirunelveli.
6. The Superintendent of Police,
Kanyakumar District @ Nagercoil.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57999
+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 57995

SKN

TE/JC/SAR-I : 08/06/2017 : 7P/9C