



For Petitioners : Mr.C.Dhanaseelan
For Respondent No.1 : Mr.S.Meenakshi Sundaram,
Senior Counsel
for Mr.N.G.A.Natraj
For Respondent No.2 : M/s.Lita Srinivasan
For Respondent No.3 : Mr.G.Prabhu Rajadurai

O R D E R

The sum and substance of the Revision Petitioner's case runs as follows:

The Revision petitioners herein filed a suit in O.S.No.120 of 2013 against the Respondents herein before the Sub-Court, Tuticorin for the relief of declaration to declare the Plaintiffs are the members of the Tuticorin- Nazareth diocese and are entitled to contest and vote in the Tuticorin- Nazareth Diocese and sought for consequential permanent injunction from preventing the Plaintiffs from contesting the forth coming election.

2.The Petitioners also moved an interlocutory application in I.A.No.359 of 2015 seeking for an order of interim injunction restraining the respondents from removing their names in the voters list and also from preventing the petitioners from contesting the election to the Diocese Council of CSI, Tuticorin-Nazareth.

3.The respondents resisted the application and filed detailed counter contending that the suit is hit by want of compliance with Order I, Rule 8 of CPC and the suit is also liable to be dismissed under Order II, Rule 2 of CPC as the present suit is being filed despite the pendency of previous suits relating to the Diocese Election. According to the respondents, the suit ought to have been filed invoking Order 1, Rule 8 of CPC, with the leave of the court and express authorization of such interested persons. Yet another contention of the respondents is that the Revision petitioners are removed from voter's roll in the light of their default over subscription. Hence they prayed for dismissal of the Interim Injunction application.

4.The Trial Court on appreciation of the available records vide an order dated 28.05.2013 granted Interim Injunction as prayed for by the Revision petitioners after having an elaborate discussion over the issue. Aggrieved over the same, the respondents herein filed Civil Miscellaneous Appeal in C.M.A.No.18 of 2013 before the learned 1st Additional District Court, Thoothukudi and the same came to be allowed by an order dated 17.11.2014. The said order is under challenge in this Civil Revision.

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5.I heard Mr.C.Dhanaseelan, learned counsel appearing for the



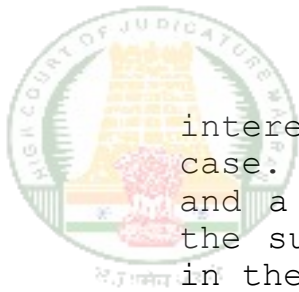
petitioners, Mr.S.Meenakshi Sundaram, learned Senior Counsel for Mr.N.G.A.Natraj, learned counsel for the 1st respondent, M/s.Lita Srinivasan, learned counsel for the 2nd respondent and Mr.G.Prabhu Rajadurai, learned counsel for the 3rd respondent and perused the entire materials available on records.

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6. The Learned Counsel for the Revision petitioners submitted that they are the members of Tuticorin- Nazareth Diocese and they are entitled to participate and vote in the Elections of the Diocese. However the respondents lawlessly with a view to prevent the revision petitioners from contesting the forthcoming election have not included the names of the revision petitioners in the voter list, despite being a Member of the diocese.

7. In so far as the contention of the respondents that the suit is hit by want of compliance with Order 1 Rule 8 of CPC, the Learned counsel for the revision petitioners to agitate the same, relied upon the decision of the Hon'ble Apex Court made in the matter of Singhai Lal Chand Jain (Dead) Vs. Rashtriya Swayam Sewak Sangh, Panna and others reported in 1996 SCC (3) 149, wherein it was held as following that

"Procedure is the handmaid to the substantive justice. The suit was laid against the Sangh represented by the Manager, Mr. GorelalSoni, the President, Shiv BehariSrivastav, a practising advocate and also a member who is none other than a Head Master of a school, three of them had Jointly filed the written statement with the defence available to them. The trial Court had proceeded on that basis. After framing the appropriate issues, the trial Court had accepted the plea of the defendants and dismissed the suit. On appeal, when the correctness thereof was canvassed, the respondents defended the action. The High Court on consideration of the evidence, did not accept the plea of the Sangh and accordingly, granted a decree. The matter did not rest there, they came in appeal by way of special leave which was argued by one of the most eminent members of the Bar on behalf of the Sangh. The leave was refused by this Court. Thus it can be concluded that the Sangh was properly represented by the President, the Manager who was at the relevant time in office on behalf of the Sangh and also member of the Sangh who was no other than a Head Master and a practising advocate as President. The High Court, after hearing counsel on either side, considered the case and decreed the suit. With dismissal of the special leave petition by this Court, the decree became final, Therefore, it cannot be said to be a collusive suit nor a shadow of negligence is traceable so as to treat the decree a nullity. It is true that no permission of the Court was taken to be sued in a representative capacity by or on behalf of the Sangh. But clause (b) of Order 1, Rule 8 indicates that it may sue or be sued, or may defend such suit, on behalf of, or for the benefit of all persons so



interested, Clause (b) clearly applies to the facts in this case. The President of the Sangh, the Manager of the Sangh and a Member have duly represented the Sangh and defended the suit for the benefit of all the persons so interested in the Sangh."

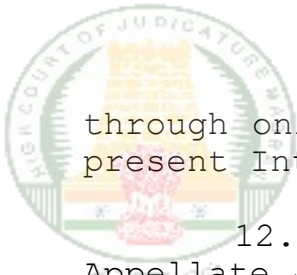
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8. Though yet another contention of the respondents is that the suit is hit by Order II Rule 2 of CPC and reliance was made in this regard by the respondent's counsel over the decision reported in 1997 (1) SCC 99, the said contention cannot be countenanced at this stage as the said ground of attack is liable to be decided by the Trial Court in the main suit on appraisal of the records available before it. However this court finds that the above referred decision do not aid the respondent's case, since the respondents failed to produce the records of trial court and the pleadings of the first suit and nothing on record is brought by the respondents.

9. Though very many contentions are raised by either sides on factual grounds, this court before going into those factual grounds deems fit to scrutinize the impugned order on legal aspect. The prime contention of the revision petitioners is that the finding of the appellate judge in so far as the applicability of Order 1, Rule 8 of CPC in the case on hand is unsustainable.

10. Whereas in the case on hand though the revision petitioners seek for a relief pertaining to their individual voting rights and their right of contesting in the forthcoming diocese elections, the appellate judge misconstrued as if the suit on hand ought to have been filed invoking Order 1, Rule 8 of CPC. The learned appellate judge miserably failed to distinguish an individual right and a collective right. Only if the revision petitioners filed a suit on behalf of or for the benefit of the Diocese or its sub organs, necessarily Order 1, Rule 8 of CPC will come into play. However, in the case on hand there is no such prayer sought either representing the diocese or it's organ and the suit is found to be filed in their individual capacity, therefore as rightly contented by the learned counsel for the revision petitioners, this court is unable to accept the finding of the appellate judge. In fact such ground was raised before the Trial Court by the respondents herein and the same was negatived by the Learned Judge.

11. In as much as the finding of the appellate judge that in the light of the decision made by this Court reported in 2009 (4) L.W. 742 in the Thoothukudi-Nazareth Diocese Rep. by its treasurer and another Vs. The Church of South India represented by its General Secretary, it is seen that the said suit was filed by the Diocese as against the Church of South India. Therefore there is no doubt that Order 1, Rule 8 of CPC will come into play. However, in the case on hand the plaintiffs are found to be individual persons and they seek for relief claiming for their personal right to vote and contest. Again it is needless to say that all those aspects have to be gone



through only in the main suit and the same cannot be decided in the present Interim Injunction application.

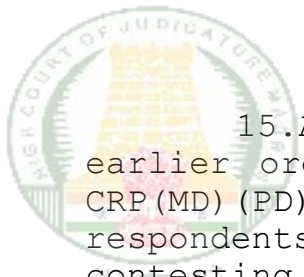
12. Coming to the other facet of reasoning by the learned Appellate Judge, the relief sought for by the revision petitioners / plaintiffs in relief A and relief B are mutually exclusive and contradicting each, this court has given its anxious consideration over the nature of relief sought by the revision petitioners in relief A and B. For better appreciation of the same the relevant reliefs are extracted hereunder:

"(a) Declaring that the plaintiffs are the members of the Tuticorin Nazareth Diocese and entitled to contest the election and consequently pass an order of permanent injunction restraining the defendants their men and agent from preventing the Plaintiffs From contesting the forth coming Diocese Elections.

(b) Direct the defendants to include the name of the plaintiffs in the voter list of respective Churches by an order of mandatory injunction".

13. It is the contention of the respondents that the above prayers are mutually exclusive that in relief 'A' the plaintiffs claim a declaration as a member of the Thoothukudi-Nazareth Diocese, but in relief 'B' claims to include their names in the voter list of respective churches.

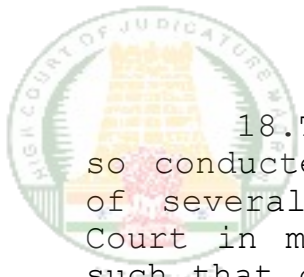
14. On careful perusal of the above reliefs, this Court is unable to appreciate the stand of the respondents. The above reliefs sought would demonstrate that the revision petitioners seek for a declaratory decree to the effect that they are members of Thoothukudi-Nazareth Diocese and in consequence seek to include their name in the voter list. Therefore, there is nothing ambiguous and contradictory. It is noteworthy that the revision petitioners have established their case before the trial court by obtaining a declaration as members of Thoothukudi -Nazareth Diocese and their names were also found to be included in the voter list. It appears that reason behind deletion of the petitioners' name according to the respondents is that the petitioners were default in subscription fee. The trial court on appraisal of the factum that the petitioners were neither served nor communicated with regard to their alleged default and by taking into account that there was no specific order or order of excommunication made by the respondents in this regard, besides in the light of the factum that the petitioners established themselves as members of the respondent Diocese, found that the petitioners names are liable to be included in the voters list and as well they are entitled to contest in the then scheduled election for the year 2013. However on appeal by the respondents, the appellate court rejected the claim of the petitioners herein. The said order is under challenge in the Civil Revision Petition by petitioners.



15. At this juncture it is noticed that this court vide an earlier order dated 28.04.2018 passed in C.M.P.No.4411 of 2018 in CRP(MD) (PD)No.820 of 2015 ordered interim injunction restraining the respondents from preventing the petitioners from participating, contesting and voting in the Diocese Election - 2018 of the CSI Thoothukudi-Nazareth Diocese either by not including the petitioners' name in the voter list or otherwise, pending disposal of the present CRP(MD) (PD)No.820 of 2015. However regardless of the order of Injunction passed in C.M.P.No.4411 of 2018 dated 28.04.2018 restraining the respondents from preventing the petitioners from participating, contesting and voting in the Diocese Election - 2018 of the CSI Thoothukudi-Nazareth Diocese, the Voters' roll for 2018 were made ready by not including the petitioners' name. Seeing as the interim order passed by this Court is not complied by the respondents 2 & 3 herein that they have not included revision petitioners' names in the voters list and also not accepted their nomination and they have filed contempt petition in CMP.No.4773 of 2018 in CMP.No.4411 of 2018 in CRP(MD) (PD)No.820 of 2018 under Order 39, Rule 2(A) of CPC. It is noteworthy that the Diocese Election at various levels for the year 2018 have been announced on 14.04.2018 and the elections was then scheduled to be held on 17.06.2018.

16. In the said factual background, the matter remained posted for pronouncing orders on 14.06.2018 by this Court and before pronouncing the order on 14.06.2018, the 2nd respondent has filed an application in C.M.P.No.5037 of 2018 in C.R.P. (MD) (PD)No.820 of 2018 for re-opening the case, so as to permit the production of voter's list of four pastorates. It is noteworthy that the above application for reopening the case was made on the date of pronouncing order in the main revision petition and in the contempt proceedings as stated above. However, since there was no explanation rendered by the respondents towards the contempt petition filed by the petitioners, this Court by reopening the case, made an order of interim injunction restraining the 2nd and 3rd respondents not to proceed with the election process till 19.06.2018.

17. While the matter stand as such, revision petitioners filed C.M.P.Nos.5094 and 5095 of 2018, seeking for the Stay of Election proceedings and to punish the respondents 1 to 3 under Order 39 Rule 2A r/w the Contempt of Court Act, by alleging that the 2nd and 3rd respondents by obtaining a legal opinion dated 15.06.2018 from their advocate by name M.K.Ezhil Mary, to the effect that there is no barrier to conduct the election to the Pastorate Committee, have thereby conducted the Election on 17.06.2018 by holding that the injunction was ordered only in respect of respondents 2 and 3. It is the petitioners' case that the 2nd respondent who represents the 1st respondent, as such cannot claim that there is no injunction order against him in the order dated 14.06.2018 passed in C.M.P.No.4775 2018. It is pertinent to note here that the 1st respondent is a Diocese as Constitution and the same is represented by the 2nd respondent Bishop.



18. The petitioners further contend that the elections were so conducted flouting this Court's order dated 14.06.2018, despite of several publication detailing the Injunction granted by this Court in majority of prominent news Dailies by the 3rd respondent, such that carrying news Column that the election has been stayed by the High Court. The election was so conducted brushing away the requests of majority of members of the Diocese including the petitioners to cancel the election. Thus the election conducted by the respondents in violation of this Court's order is liable to be set aside and the respondents deserve to be prosecuted for their wilful disobedience of this Court's order made in C.M.P No.4775 of 2018 dated 14.06.2018.

19. It is their further contention that the respondents, when are being proceeded for contempt of the order dated 28.04.2018 passed in CMP(MD)No.4411 of 2018 by this Court, they have conducted the election on 17.06.2018. Consequently the respondents are liable to be sued under Rule 2A of Order 39 CPC and accordingly election dated 17.06.2018 is to be set aside.

20. Whereas if the election is not set aside, all further election of the Diocese will be held on the basis of the illegal election dated 17.06.2018 conducted by the respondents for the post of Pastorate Committee members and Diocesan Council members. The next phase of election was then going to be held on 23.06.2018 for the post of Pastorate Committee members, as representative of the Pastorate workers and the Diocesan workers living under the pastorates.

21. In actual having seen that in spite of the pendency of the contempt petition and the Injunction order mentioned above, the respondents prepared to conduct the election, on 15.06.2018 an advocate notice was sent by the petitioners through e-mail to the respondents, informing them that conduction of the election by the respondents 2 and 3, even otherwise through their subordinates will also attract contempt proceeding and so they have to desist from conducting the election. However, the 2nd respondent herein conducted election in violation of this Court's order, which is a clear case of contempt.

22. That apart the News Dailies like Dina Thanthi, Dinakaran, Dinamalar and Indian Express dated 16.06.2018 carried a notice issued by the 3rd respondent as Election Officer of the Diocese that the election shall not be conducted in view of the High Court's order. However, the elections were conducted on 17.06.2018 by the 2nd respondent in all the Pastorates of the 1st respondent numbering about 120 by the Pastorate Chairman who are the Subordinates of the respondents 1 to 3 and are functioning under their control. The 2nd respondent is the Bishop, who is representing the 1st respondent i.e. the Diocese, the 3rd respondent is the Election Convenor of the Diocese and the 2nd and 3rd respondents are responsible for all the election though the basic election at the pastorates are conducted

by the Pastorate Chairman concerned under the supervisory control of 2nd respondent.

23. In reply, the 3rd respondent by way of filing an affidavit dated 21.06.2018 submits that on 15.06.2018, a meeting of office bearers of the Diocese was convened by the 1st respondent at about 11.30 a.m. in his chamber in the Diocese office. Both the respondents 1 and 2 and other office bearers namely the Vice Chairman, the clerical Secretary, Law Secretary and 1st respondent's Advocate were present and in the said meeting, the 3rd respondent informed other office bearers that this Court had passed the order on 14.06.2018, restraining the Diocese from proceeding with the election on 17.06.2018 and that he was served with a copy of the said order in the morning hours of 15.06.2018. Thereby he informed other members that no election could be conducted. However the 2nd Respondent made clear that as per the legal advice rendered by his advocate, the election will be conducted.

24. The 3rd respondent in view of the factum that that there are 106 Pastorates in Thoothukudi Nazareth Diocese and about 6 councils in which elections would be conducted and the practical difficulty and impossibility to contact all the Pastorates in the short time, caused a publication on 16.06.2018, vide newspapers namely Dinamani, Dinakaran, Dinamalar and Indian Express detailing that in view of the order passed by this Court, the election would not be conducted on 17.06.2018 and to contrary if any Pastorate Chairman or Council Chairman conducts election, the same would amount to contempt of Court. That apart he also sent individual notices to all the Six Council Chairman enclosing the order copy of this Hon'ble Court made on 14.06.2018. The said notices were sent by Courier on 15.06.2018 and in the meanwhile, the Petitioners made a complaint to the police and from a consequent call from the office of the Superintendent of Police, he went to the Thoothukudi Police Station and furnished a statement informing the Inspector of Police about the steps taken by him in informing others about the order of this Court. He further made a Written Submission that he would not be responsible for any election conducted by the 2nd Respondent or any other office bearers or council chairman and the chairman of the Pastorates.

25. The 3rd respondent is the Treasurer of the Diocese and as an Election convenor of the respondent Diocese, he instructed not to conduct the election. He further submits that he was told that on 17.06.2018, elections remained conducted at various Pastorates and that as Election Convenor he does not recognize those elections conducted on 17.06.2018.

26. On the other hand, he received objections from one Swarnaraj, J. Praveen and on behalf of certain Meignanapuram Pastorate members that the Elections were conducted in an irregular manner. Further he do not have any objection to declare the Election dated 17.06.2018 as null and void and thereby the 3rd respondent



pleaded that he had not involved in any act contemptuous to the Order of this Court.

27. In reply the 1st respondent filed an affidavit dated 22.06.2018 stating that the contempt petition CMP(MD)No.4775 of 2018 was instituted only as against the 2nd and 3rd respondents and not against 1st respondent. The said affidavit is found to be sworn by the 2nd respondent citing the order of this Court reading as following that "Under such circumstances, there shall be an order of interim injunction, restraining the second and third respondents not to proceed with the election process till 19.06.2018 and in other words, the respondents 2 and 3 shall not conduct the election, which was specifically scheduled to be held on 17.06.2018 by the 1st respondent, till 19.06.2018".

28. The 1st respondent further submits that no request to any advocate to give legal opinion pertaining Election was made by the 1st respondent and hence unaware of the said factum. There is no order of injunction made by this Court as against the 1st respondent and further the respondents being an unregistered voluntary association can be represented only with the leave of the Court under Order 1, Rule 8(3) of CPC. On the other hand when no such leave has been granted, the suit itself is not maintainable. Therefore, he prays for dismissal of the above Civil Revision Petition and as well the connected CMPs.

29. By way of reply to the application under Order 39 Rule 2A of CPC, the 2nd respondent filed an affidavit dated 25.06.2018 stating that the 1st respondent is accountable for the conduction, since it was conducted by 1st respondent. He further prays that elections have to be carried out for the next level. The relevant paragraphs 8 and 10 are extracted hereunder respectively:

"8. I submit that elections at the pastorate level were not conducted by me and i have not disobeyed the order of this Hon'ble court dated 14.06.2018. Pursuant to orders dated 14.06.18, elections have been conducted by the Pastorate Chairmen of the 1st respondent."

"9. I submit that unless further stages of elections are permitted to be conducted, the vast majority of the members of the Tuticorin nazareth Diocese who are not even impleaded by procedure laid down by law would be subjected to grave hardship and irreparable injury. "

30. Though very many contentions are raised by the respondents agitating merits and demerits rooting into the core issue of right, title or liabilities or maintainability of the suit, all those can be gone into only after conclusion of the suit on appraisal of oral and documentary evidence on either side. In as much as, the scope of grant of interim injunction is concerned, a Court of Law has to see that there is a prima facie case established by a party, as to whether balance of convenience rest in his favour and that failure to order an injunction would result in irreparable and irreversible loss.



31. In the case on hand, the petitioners admittedly enjoyed a Positive Injunction as prayed for by them to include their name in Electoral role.

32. On evaluation of Trial Court's order of Injunction in the light of factum that petitioners established themselves to be the members of dioceses and that they were neither served nor communicated with regard to their alleged default nor there was specific order nor an order of excommunication, are liable to be included in the voters list, this Court finds no infirmity or irregularity at the Interlocutory stage of the suit. Though in this regard reliance was made by the respondents over paragraph 5 of a decision of this court reported in 1997 (1) CTC 77, in the matter of R.Lakshmipathy Vs Madras Gymkhana Club, the same is inapplicable to the facts and circumstances in the case on hand, since in the matter referred above there was a notice of demand and in spite of the same there was no payment was made towards subscription.

33. Thus this Court having considered the relief sought for by the petitioners and the balance of convenience and that even in case of success in the present Civil Revision Petition, but after conduction of election for the year 2018 would be nought resulting in severe, irreparable loss to the petitioners granted an Interim Injunction dated 14.06.2018. It is noteworthy to mention that the above celebrated principles involving granting of injunction is emphasised by the Hon'ble Apex Court in the matter of Mandali Ranganna and others vs T.Ramachandra and others reported in 2009 (5) CTC 398 vide para-18.

34. As stated above, the first phase of the Diocese election have been scheduled on 17.06.2018. The elections were meant to the post of Diocesan Council membership and Pastorate Committee membership. Since the names of the petitioners were removed from the voters list by the respondents, the petitioners approached this Court and this Court directed the respondents to include the petitioners' name in the voter list and to accept their nominations. However, due to the non-implementation of this Court's order directing the respondents to include their name in the voter list by way of mutation of the voter list dated 02.05.2018, besides the failure of the respondents to publish the same in the Pastorate level where from the voter list originates, the 2nd and 3rd petitioners were unable to file their nomination in time. Only in the said circumstance this Court granted Injunction dated 14.06.2018 restraining the respondents 2 and 3 from proceeding with the election, in view of violation of its earlier order in C.M.P.No.4411 of 2018 dated 28.04.2018.

35. The preceding paragraphs would precisely reveal that despite an order of injunction made by this court, there was an election conducted on 17.06.2018. In so far as the 3rd respondent is concerned, this court in view of the publications and communications



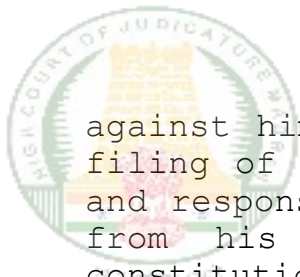
detailing the order of this court and as well his conduct narrated in his reply affidavit, is of the firm opinion that the 3rd respondent has made all efforts to comply with the order of this court dated 14.06.2018. However the 3rd respondent is answerable and responsible for non implementation of this Court's Order made in C.M.P.No.4411 of 2018 dated 28.04.2018. Undoubtedly the records reveal that the respondents 2 and 3 in utter disregard and contravention have brought to a close of the Voter's list by not including petitioners' name, in sheer breach of the Order of this Court dated 28.04.2018.

36.Now the next question arise before this court is as to whether the claim of the 2nd respondent is bonafide and acceptable contending that the 1st respondent is solely responsible for the conduct of election despite an injunction ordered by this court.

37.On perusal of affidavit filed by the 2nd respondent, Bishop on behalf of 1st respondent constitution, it is patent that the 1st respondent is only CSI Tuticorin - Nazareth Diocese which is represented by the Bishop who is the 2nd respondent. Therefore the 2nd respondent cannot escape from the contempt by saying that the election was conducted only by the 1st respondent and not by him. Further in the opinion of this court, such stand contending that the injunction ordered against the 2nd and 3rd respondents would not bind 1st respondent is unsustainable and liable to be rejected. In other words the 2nd respondent who also represents, the 1st respondent cannot project himself to be alien to the issue. In fact such stand is inappreciable, in view of the factum that the elections are to be conducted from the members of diocese who in turn would be elected or nominated in a committee or in administrative side.

38.In such case this court finds that the 2nd respondent despite well aware of the injunction order made by this court with a view to conduct an election as per his whims and fancies and in contrary to the order of this court, has conducted the election on 17.06.2018 by taking Shelter under the guise of the 1st respondent by floating the order of this court.

39.This Court finds that it is irresponsible and ridiculous for the 2nd respondent who himself operate and represent the 1st respondent, Diocese viz. a Legal person, had filed an affidavit stating that the election was conducted by the 1st respondent. In other words, unless otherwise the 2nd respondent acting in his Official capacity had conducted the election of the 1st respondent Diocese, certainly the Election would not have been conducted. Thus there is a solitary act of disobedience and breach of the injunction of this Court's Order dated 14.06.2018 by the 2nd respondent and as consequence the remedy available to the aggrieved would be to detain the person guilty of disobedience or breach in civil prison under Order 39, Rule 2A CPC. There is no doubt that the 2nd respondent was guilty of disobedience and breach of the injunction in the present case and was accordingly in contempt and the same requires an action



against him in the interests of administration of justice. By mere filing of an Affidavit of apology, 2nd respondent, who is in charge and responsible for the acts of 1st respondent diocese cannot escape from his liability, by pointing his finger towards a body constitution, the 1st respondent.

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40. In this regard it would be relevant to look into the decision of the Hon'ble Patna High Court reported in Shri Subodh Copal v. Dalmia Jain and Co., Ltd., reported in AIR 1951 Pat 266, holding that a party to an order of injunction cannot, with impunity, disobey the order by assuming or taking a different capacity, in respect of the act or acts which constitute a breach of the order of injunction.

41. In the said case, having found that in any manner whatsoever, the applicant therein was guilty of the breach of the order by holding his conduct being highly condemnable, held that the punishment awarded there in was far too lenient.

42. Further this Court is of the opinion that though it may be an Interim Order, it does not mean it can be taken in a lighter sense or the same can be floated in air, but the same has to be scrupulously adhered, regardless of the final outcome of the main suit.

43. This Court likes to emphasis the following decisions in this regard, highlighting the scope and requirement of adherence of an interim order:

- The judgment of the Privy Council in Eastern Trust Co. Vs. Makenzie Mann & Co. Ltd., reported in AIR 1915 PC 106, holding that "An injunction, although subsequently discharged because the plaintiff's case failed, must be obeyed while it lasts...."
- The judgment of the Hon'ble Orissa High Court in the matter of Gobinda v. Chakradhara, reported in AIR 1971 Orissa 10 that the Court is concerned only with the question whether there was disobedience of the order of injunction and not with the ultimate decision in the matter.
- Kishore Chandra Jagadev Ray vs Puri Municipality And Anr. reported in AIR 1988 Ori 284 holding that what the Court is concerned with is not the ultimate decision in the matter, but as to whether on the date the impugned act was committed it was in violation of an existing restraint order to the knowledge of the violators.

44. By taking into conduct of the 2nd respondent, this Court feels that it is high time to say again that Courts have to ensure scrupulous observance of its orders. In this regard this Court like to highlight a decision of the Hon'ble Kerala High Court, in Antony v. Teon, C.R.P.No.228 of 1982, holding that the court has to ensure scrupulous observance of its orders by a party to the case and a person-guilty of violation of such order is to be ordered detention



in civil prison and the said decision of the Hon'ble Kerala High Court was endorsed by the Hon'ble Apex Court on appeal.

45. Though an unconditional apology was made by the 2nd respondent, this Court rejects the same as the apology lacks bonafide. In this regard it would be useful to look into the decision of Hon'ble Rajasthan High Court made in the matter of Sharma v. C.S. Bansal reported in 1993 (1) WLC (Raj.) 338 holding that unconditional apology which lacks bonafides, cannot be accepted.

46. Ultimately in the context of wilful disobedience of an order of a Court and the consequences thereon, it is fundamental to quote a renowned decision of the Hon'ble Apex Court having extensively dealt with all the relevant provisions and nook and corners in this regard, in the matter of Patel Rajnikant Dhulabhai & ANR Vs. Patel Chandrakant Dhulabhai & Ors. Reported in [2008] INSC 1195 holding as following that

"52. In the celebrated decision of Attorney General v. Times Newspaper Ltd.; 1974 AC 273 :

(1973) 3 All ER 54 : (1973) 3 WLR 298; Lord Diplock stated:

"There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

53. In Anil Ratan Sarkar & Ors. v. Hiral Ghosh & Ors., (2002) 4 SCC 21, this Court held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence. It was observed that power to punish a person for contempt is undoubtedly a powerful weapon in the hands of Judiciary but that by itself operates as a string of caution and cannot be used unless the Court is satisfied beyond doubt that the person has deliberately and intentionally violated the order of the Court. The power under the Act must be exercised with utmost care and caution and sparingly in the larger interest of the society and for proper administration of justice delivery system. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.

54. In Commissioner, Karnataka Housing Board v. C. Muddalan, (2007) 7 SCC 689, one of us (C.K. Thakker, J.) observed that once a direction is issued by a competent



Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. Upholding of such argument would seriously affect and impair administration of justice.

55. In *All Bengal Excise Licensees Association v. Raghabendra Singh & Ors.*, (2007) 11 SCC 374, this Court considered several cases and observed that wilful and deliberate act of violation of interim order passed by a competent Court would amount to contempt of Court.

56. A reference in this connection may also be made to a decision of this Court in *Tayabbhai M. Bagasarawala v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443. In that case, the plaintiff-landlord filed a suit against the defendant-tenant in the City Civil Court for permanent injunction restraining the defendant from carrying on construction in the suit premises. Ad interim injunction was granted by the Court. Defendant's application for vacating injunction was dismissed. The defendant, however, committed breach of injunction. The plaintiff, hence, filed an application under Order XXXIX, Rule 2-A of the Code. The defendant came forward and raised an objection as to jurisdiction of the Court and power to grant injunction. The High Court, ultimately, upheld the objection and ruled that City Civil Court had no jurisdiction to entertain the suit. It was, therefore, argued by the defendant that he cannot be punished for disobedience of an order passed by a Court which had no jurisdiction to entertain a suit or to grant injunction. The High Court upheld the contention. The plaintiff approached this Court.

57. This Court observed that until the question of jurisdiction had been decided, the City Civil Court possessed power to make interim orders. The Court could also enforce them. A subsequent decision that the Court had no jurisdiction to entertain the suit did not render interim orders passed earlier non est or without jurisdiction. A party committing breach of such orders could not escape the consequences of such disobedience and violation thereof. Accordingly, the Court held the defendant guilty for intentionally and deliberately violating interim order and convicted him under Rule 2-A of Order XXXIX of the Code and sentenced him to one month's imprisonment.

58. Speaking for the Court, Jeevan Reddy, J. stated;

"Can it be said that orders passed by the Civil Court and the High Court during this period of six years were all non est and that it is open to the defendants to flout them merily, without fear of any consequence. The question is whether the said decision of the High Court means that no



person can be punished for flouting or disobeying the interim/ interlocutory orders while they were in force, i.e., for violations and disobedience committed prior to the decision of the High Court on the question of jurisdiction. Holding that by virtue of the said decision of the High Court (on the question of jurisdiction), no one can be punished thereafter for disobedience or violation of the interim orders committed prior to the said decision of the High Court, would indeed be subversive of the Rule of Law and would seriously erode the dignity and the authority of the courts.

59. From the above decisions, it is clear that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.

60. Now, in the instant case, both the orders passed by this Court on April 26, 2004 and January 10, 2005, were explicitly clear.

The first order totally prohibited/restrained the respondents/ condemners from creating any interest whatsoever in the suit property. As held by us, in spite of the said order, interest had been created by the contemnors in the suit property. But even otherwise there is intentional disobedience and wilful breach of the subsequent order dated January 10, 2005 inasmuch as transactions had been entered into without issuing notice to the petitioners. We have already held that they could not have been entered into by the respondents before issuance of notice to the petitioners. The respondents were clearly aware of the order. In fact, the action was sought to be defended and justified on the ground that the Court had not directed 'prior' notice, and as such, non-issuance of notice before entering into sale transactions would not amount to disobedience of the order of the Court. We are unable to uphold the contention. In the circumstances it must be held that the disobedience of the order by the contemnors was wilful, intentional and deliberate.

61. The question then is whether the case calls for imposition of punishment on the contemnors. The learned counsel for the contemnors submitted that in the affidavit in reply, the respondents have stated that if this Court comes to the conclusion that they had committed contempt of Court, the Court may accept unconditional and unqualified apology and may discharge notice. The counsel submitted that the statutory provision itself enacts that no apology shall be rejected merely on the ground that it is qualified or conditional [Explanation to Section 12(1)].



62. We must frankly admit our inability to agree with the learned counsel. In the light of what is stated above, we are convinced that the contemnors have intentionally and deliberately violated the orders of the Court.

We are also convinced that the orders were clear, unambiguous and unequivocal having one and only one meaning. Wilful and deliberate disobedience of the orders passed by the apex Court of the country can never be said to be bona fide, honest or in good faith. If it is so, the action calls for serious view to ensure proper administration of justice.

63. In *Hiren Bose, Re*, AIR 1969 Cal 1 : 72 Cal WN 82, the High Court of Calcutta stated:

"It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind.

Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be".

64. It is well-settled that an apology is neither a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, it is intended to be evidence of real contriteness [Vide *M.Y. Shareaf v. Hon'ble Judges of the High Court of Nagpur*; (1955) 1 SCR 757 : *M.B. Sanghi v. High Court of Punjab & Haryana*, (1991) 3 SCR 312].

65. In *T.N. Godavarman Thirumulpad through the Amicus Curiae v. Ashok Khot & Anr.*, 2006 (5) SCC 1, a three Judge Bench of this Court had an occasion to consider the question in the light of an 'apology' as a weapon defence by the contemner with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D. Jaikwal v. State of U.P.*, (1984) 3 SCC 405:

"We are sorry to say we cannot subscribe to the 'slap-say sorry- and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slipper taken the slap smart less upon the said hypocritical word being uttered.

Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry".



66. The Court, therefore, rejected the prayer and stated:

"Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward".

67. Similar view was taken in other cases also by this Court.

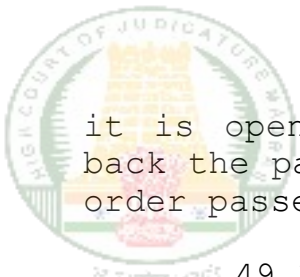
68. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a 'tactful move' when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.

69. Considering the facts and circumstances in their entirety, in our opinion, ends of justice would be served if we hold the respondents/contemnors guilty under Section 12 of the Contempt of Courts Act, 1971, read with Section 94(c) and Rule 2-A of Order XXXIX of the Code of Civil Procedure, 1908 as amended by the Code of Civil Procedure (Amendment) Act, 1976 and Article 129 of the Constitution and order the respondents- contemnors to undergo simple imprisonment for a term of two weeks i.e. fourteen days."

All the above referred decisions would demonstrate that if Courts allow gross contempt of its Order and that violator go unpunished without an adequate sentence the same would be mockery of justice.

47. The above referred decisions of the Hon'ble Apex Court and other Hon'ble High Courts would also exhibit that violation of Court Orders cannot be taken in a lighter sense and it is not only power of the Court, but it is its duty to punish the offender committed the breach or disobedience to the order of the Court.

48. Again it is also a settled Legal Proposition that no party can be allowed to take advantage of his own wrong, in spite of an order to the contrary passed by the Court, for his own advantage to the prejudice of the other party and in case of any disobedience resulting in unjust enrichment in any manner, the Court by exhausting its inherent powers has to restore the parties to the original status as stood before violation of its Order. In this regard it would be useful to look into the decision of the Hon'ble Patna High Court in the matter of State of Bihar v. Sha Devi, reported in AIR 1956 Pat 455, holding that if a court comes to a conclusion that a party by disobeying an order of a Court has done something for its own advantage to the prejudice of the other party,



it is open to the Court under its inherent jurisdiction to bring back the parties to a position where they originally stood as if the order passed by the Court has not been contravened.

49. In view of the above decisions, the Election dated 17.06.2018 and subsequent dates are liable to be set aside and the parties are restored to their earlier status to Election.

50. In all fairness, this Civil Revision Petition is liable to be allowed by setting aside the order in C.M.A.No.18 of 2013 dated 17.11.2014 on the file of the learned 1st Additional District Court at Tuticorin.

51. In so far as the conduction of election in violation of Order of this Court dated 14.06.2018, this Court finds no fault on the part of the 3rd respondent in view of his actions to comply with the Order dated 14.06.2018. Hence in the considered opinion of this Court, the 2nd respondent alone is liable to be punished under the contempt of court and Order 39 Rule 2A for conducting election on 17.06.2018 and subsequent dates in so far as breach and wilful disobedience of the order passed by this Court on 14.06.2018.

52. On the other hand, undoubtedly as stated above both the respondents 2 and 3 in utter disregard and contravention have brought to a close of the Voter's list by not including petitioners' name, in sheer breach and wilful disobedience of the Order of this Court dated 28.04.2018. Thus this court finds that the respondents 2 and 3 have wilfully disobeyed and breached the order of injunction dated 28.06.2018.

53. Therefore this Court in line with the Law of Land made by the Hon'ble Supreme Court propounding in the matter of Balram Singh v. Bhikam Chand reported in AIR 1985 Page 1726, holding that it would be a travesty of justice if the court were to allow gross contempt of court to go unpunished without an adequate sentence, deems fit to sentence the 2nd & 3rd respondents in following terms, this Court deems fit to allow the petitioners' CMP.No.4773 of 2018 filed under Order 39 Rule 2A of CPC and the 2nd and 3rd respondents namely Rt.Rev.S.E.C.Devasahayam and D.Mohan Arumainayagam are liable to be punished by sending them into Civil Prison and also to be awarded cost for their Contemptuous Act.

54. Likewise this court having found that the 2nd respondent had wilfully disobeyed and breached the order of injunction dated 14.06.2018 deems fit to allow the petitioners' CMP.No. 5095 of 2018 filed under Order 39 Rule 2A of CPC and the 2nd respondent Rt.Rev.S.E.C.Devasahayam is liable to be punished by sending him into Civil Prison and also liable to be awarded cost for his Contemptuous Act.

55. But, this court finds that the 3rd respondent had neither disobeyed nor breached this Court's order of injunction dated



14.06.2018. Therefore the petition in CMP.No.5095 of 2018 filed by the petitioners under Order 39 Rule 2A of CPC shall liable to be dismissed in so far as 3rd respondent is concerned.

56. In the result:

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(a) this Civil Revision Petition is allowed by setting aside the order passed in CMA.No.18 of 2013 dated 17.11.2014, on the file of the learned 1st Additional District Court, Tuticorin and the order passed in I.A.No.359 of 2013 in O.S.No.120 of 2013 dated 28.05.2013 on the file of the learned Sub Court, Thoothukudi is restored;

(b) CMP.No.4773 of 2018 filed under Order 39 Rule 2A of CPC is allowed by sentencing the respondents 2 and 3 viz., Rt.Rev.S.E.C.Devasahayam and D.Mohan Arumainayagam for a term of two weeks in the Civil Prison and the cost of Rs.5,000/- each to be paid to the Hon'ble Chief Justice Relief Fund of this Hon'ble Court within a period of two weeks from the date of receipt of a copy of this order;

(c) CMP.No.5095 of 2018 filed under Order 39 Rule 2A of CPC is allowed by sentencing the 2nd respondent viz., Rt.Rev.S.E.C.Devasahayam for a term of two weeks in the Civil Prison and a cost of Rs.5,000/- directed by the 2nd petitioner to be paid to the Hon'ble Chief Justice Relief Fund of this Hon'ble Court within a period of two weeks from the date of receipt of a copy of this order and the petition is dismissed in respect of 3rd respondent viz., D.Mohan Arumainayagam;

(d) both the sentences imposed in CMP.No.4773 of 2018 and CMP.No.5095 of 2018 against the 2nd respondent shall be run concurrently;

(e) the election conducted for the 1st respondent on 17.06.2018 and subsequent dates by the respondents 1 and 2 are set aside and the parties are restored to the earlier status to election;

(f) the trial Court viz. Sub Court, Thoothukudi, is hereby directed to issue suitable warrant through the local Police Station to secure the respondents 2 and 3 and send them to the Civil Prison as per the above order of punishment;

(g) CMP.No.5093 of 2018 filed to implead the petitioner as a party to the above Civil Revision Petition is unnecessary and accordingly, the same is dismissed;



(h) CMP.No.5094 of 2018 is dismissed as infructuous.

57. In view of the above rival submissions and contentions raised by either sides, this Court in the interest of justice deems fit to direct a Fresh election to be conducted for the 1st respondent / CSI TUTICORIN-NAZARETH DIOCESE under the supervision of a Retired District Judge, who shall conduct the election as a Chief Election Officer.

58. Accordingly, Mr. EMKS. Siddharthar, learned Retired District Judge, having residing at Plot No.9/3 (Flat No.2), Gengu Reddy Road, Egmore, Chennai-8 (Mobile No.7010832062) is appointed as Chief Election Officer and he is directed to ensure that the names of the revision petitioners and the other eligible voters find place in the voter list and ensure that free and fair election is conducted. The learned Retired District Judge is directed to further ensure that the revision petitioners and all other interested candidatures are not being prevented from participating in the forthcoming election to be scheduled by the learned Retired District Judge / Chief Election Officer and the Election shall be conducted within a period of two months from the date of receipt of copy of this order by ensuring that the petitioners' nominations are accepted. The election shall be conducted as per the Constitutional provisions of the CSI Tuticorin-Nazareth Diocese. One Mr. C.M. Arumugam, Advocate (Enrl.No.1507 of 1997), having office at 1-270-b-1, Malligai Street, Anbu Nagar, Thirupalai, Madurai-14 (Mobile No.9443393425) is appointed as Assistant Election Officer for assisting the Chief Election Officer.

59. It is made clear that the learned Retired District Judge is directed to take assistance of the Government and the Police authorities to ensure a fair, free and peaceful election, if it is required. The Superintendent of Police, Thoothukudi District and the District Collector, Thoothukudi District are also hereby directed to provide appropriate assistance if any sought by the Election Officer. A copy of this order is directed to be communicated forthwith to the office of The Superintendent of Police, Thoothukudi District and the District Collector, Thoothukudi District.

60. The remuneration of the Learned Retired District Judge is fixed at Rs.3,00,000/- and the same shall be paid by the 1st respondent within a period of two weeks from the date of receipt of a copy of this order. The Registry is directed to communicate this order henceforth to the Learned Retired District Judge and to the Assistant Election Officer today itself. Assistant election officer's remuneration is fixed at Rs.1,00,000/- to be paid by the 1st respondent.

61. In the result, this Civil Revision Petition and Contempt petitions are allowed as indicated above. Consequently, connected Civil Miscellaneous Petitions are closed.



62.The Registry is directed to list the main Civil Revision Petition immediately after filing election completion report by the Chief Election Officer.

63.The Registry is also directed to send the copy of this order immediately to the learned Sub Court, Thoothukudi for due compliance.

After pronouncing the above judgment, the learned counsel for the respondents 2 & 3 have represented before this Court that since the respondents 2 & 3 are entitled to invoke the appeal remedy against the sentence imposed against them by this Court in C.M.P. (MD) Nos.5095 and 4773 of 2018, the order in respect of their sentence may be stayed for some period.

2. In view of the above representation, this Court is inclined to suspend the sentence for a period of two weeks and accordingly, the same is suspended for a period of two weeks from today.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.The 1st Additional District Judge, Tuticorin.

2.The Sub Judge, Thoothukudi.

3.Thiru.EMKS.Siddharthar,
Retired District Judge,
Plot No.9/3 (Flat No.2),
Gengu Reddy Road,
Egmore, Chennai-8
(Mobile No.7010832062)

4.Thiru.C.M.Arumugam,
Advocate (Enrl.No.1507 of 1997),
office at 1-270-b-1, Malligai Street,
Anbu Nagar, Thirupalai,
Madurai-14 (Mobile No.9443393425)

5.The District Collector,
Thoothukudi District,
Thoothukudi.



6.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

7.The CSI Tuticorin-Nazareth Diocese,
Caldwell Higher Secondary School,
Tuticorin - 1.

8.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court,
Madurai.

9.The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+5cc to Mr.C.Dhanaseelan, Advocate, SR.No.71029.
+1cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.71177.
+2cc to M/s.Lita Srinivasan, Advocate, SR.No.71059.
+1cc to Mr.M.P.Senthil, Advocate, SR.No.71018.
+1cc to Mr.N.G.A.Natraj , Advocate, SR.No.70976

order made in
C.R.P. (MD) (PD)No.820 of 2015 and
M.P. (MD)No.1 of 2015 and
CMP (MD)Nos.4411, 4773, 4775,
5037, 5093, 5094 & 5095 of 2018
04.07.2018

VSV

RAM/VR/SAR 2/05.07.2018/22P/20C