



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.05.2018

Pronounced on : 05.06.2018

WEB COPY

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**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN
AND
THE HONOURABLE Mrs. JUSTICE T.KRISHNAVALLI**

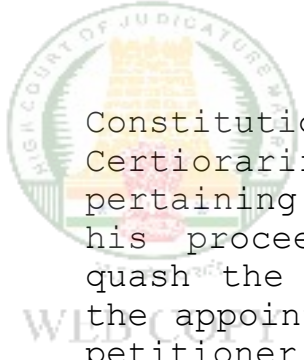
W.A. (MD) No. 790 of 2018 and
C.M.P (MD) No. 4645 of 2018
against
WP (MD) .No. 9935/2018

1.S.Muthuraj
2.K.Baul Sundar .. Appellants/Respondents 4 & 6

-Vs-

1. India Evangelical Lutheran Church Nagercoil Synod,
Rep. by its Secretary V.A.Raj,
14/92, Luther Nagar, Valliyoor,
Tirunelveli District. .. 1st Respondent/Petitioner
2. The Director of School Education,
DPI Compound, Chennai - 6.
3. The District Educational Officer,
Cheranmahadevi, Office at S.N.High Road,
Tirunelveli.
4. India Evangelical Lutheran Church,
Rep. by its General Treasurer,
R.Vijayakumar,
No.47, Eldams Road, Teynampet,
Chennai - 600 018.
5. Manuel Yesuraj .. Respondents 2 to 5/Respondents 1 to 3 & 5

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the Order dated 27.04.2018 passed in W.P.(MD) No. 9935 of
2018 on the file of this Court.



Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus by calling for the entire records pertaining to the impugned order passed by the 2nd Respondent vide his proceedings in Na.Ka.No.1827/Aa1/2017 dated 13.04.2018 and quash the same and further direct the 2nd Respondent to approve the appointment of Correspondent based on the appointment made by petitioner.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.G.Thalai Mutharasu (for R1)
Mr.V.R.Shanmuganathan (for R2 & R3)
Special Government Pleader

ORDER

(Order of the Court was made by **M.V.MURALIDARAN, J.**)

This writ appeal has been filed against allowing the writ petition setting aside the order of the 2nd respondent dated 13.4.2018 passed in pursuance to an earlier direction of this Court in W.P.(M.D) Nos.20055 of 2015 and 22564 of 2015 dated 6.3.2018.

2.The grievance of the appellant is that it is a legitimate registered minority society whereas the respondents 3 and 4 are being represented by persons belonging to new parallel societies namely a trust deed registered on 7.8.2014 as Nagercoil Synod, IELC and Ambur Synod, IELC and in order to capture the administration of the IELC, they have formed the same and as such they do not have any locus standi to challenge even the order passed by the 2nd respondent in any manner whatsoever. Quite rightly attention of this Court was drawn to the application made by the respondents 3 and 4 appointing their person as the Correspondent of the Concordia Schools at Vadakkankulam and Valliyoor run by the IELC. The bone of contention between the appellants and the respondents 2 and 3 is as to who is the actual educational agency who would be competent to appoint the Correspondent. Irrespective of the several litigations pending amongst the parties, unless otherwise the correspondent is decided and the competent educational agency as on the date of the petition and the impugned order of the 2nd respondent is done, the overall administration of the schools in jeopardy and the pupils will be affected as also the teaching staff.

<https://hcservices.ecourts.gov.in/hcservices/> account of the above dispute regarding the competency of appointment made to the post of Correspondent by either of

parties, several disputes and litigations are pointed out. It is trite that public charitable institutions should not be dragged into litigations which also borders on vexatious litigations consuming enormous amount of precious judicial time. The order under appeal has set aside the order of the 2nd res on the ground that opportunity has not been given the writ petitioners namely the respondents 3 and 4 herein as per the order the personal hearing which is subject matter of mandamus granted earlier has not been complied with. On the other hand, it is the contention of the petitioners that they have knocked on the doors of the court by way of earlier writ petition in W.P.(M.D) Nos.20055 of 2015 and 22564 of 2015 and this court by its order dated 6.3.2018 direct the 2nd respondent to consider the rival contentions and decide in accordance with law after affording opportunities to both parties. The 1st respondent has also submitted a representation dated nil.04.2018 to the 3rd respondent along with documents. However 1st respondent suppressed the material fact in the affidavit filed in support of W.P.(MD) No 9935 of 2018 that no opportunity was given and on that ground writ petition was allowed. But he filed the copy of the said representation in the typed set of papers and 3rd respondent after considering documents filed by the both side only passed an order approving the correspondent of appellant. In the matter of educational agency revolving around several litigations, the powers of the 2nd respondent are very limited. In fact the 2nd respondent would not be competent to decide as to who is the educational agency in this case, in as much as the pendency of several litigations. However, the dispute is claimed to have been resolved by way of CMA Nos.58 of 2015, by order passed by the V Additional City Civil Court, Chennai and CMA No.3 of 2016 passed by the III Additional City Civil Court, Chennai wherein it is claimed that the parallel societies run by the persons claiming administration of the respondents 3 and 4 has been resolved. By token of the same, it is argued that the person who is claimed to have been elected in 2014 as President has been held to be a person not being elected in an election conducted for the IELC. On the other hand, the respondents 3 and 4 would submit that the dispute is resolved by way of the dismissal of O.S.No.153 of 2016 by the Sub Court, Nagercoil which being a suit instituted by the 1st Appellant herein which has run into default. That is a suit for declaration and permanent injunction with reference to the new parallel society and persons claiming the posts under the respondents 3 and 4. It is the further contention that one another suit filed by the person belonging to Ambur Synod claiming to be the president of Ambur Synod has also been dismissed as withdrawn before the City Civil Court, Chennai which persons belongs to the group of the petitioners. It is also further argued on behalf of the respondents 3 and 4 that a civil suit in C.S.No.373 of 2015 is pending before the Principal Seat of the Original Side and also

of the pendency of the said suits and proceedings, the order passed in CMA Nos.58 of 2015 and CMA No.3 of 2016 would not avail the appellants.



4. Whatever be the line of offence and defence taken in the writ petition at this appellate stage by the parties, this Court is of the view that public charitable societies should have minimum or no litigation as constructive work could be done in accordance with its aims and objectives. It is more pertinent to the case on hand wherein it is seen that IELC is a public charitable minority religious institution registered as a Society. Apart from the schools, it is also running medical and other religious learning institutions. Therefore the parties instead of fighting among themselves should be well advised to perform as per the robes adorned by them. However, much cannot be said in the limited scope of this appellate jurisdiction. But it is the view of this Court that the ever widening and increasing litigation should be curbed and also it should be ensured that the fight among the parties should not disturb the administration of the schools and the education of the pupils. Ultimately it is a question of appointment of teachers and teaching staff which is the bone of contention raised before us. Under the circumstances, already two writ petitions having been contested as mentioned earlier and since it is the bed rock of litigation that the respondents 3 and 4 are claimed by persons belonging to new parallel society, the order under Appeal if allowed to stand, it would be sending the matter back to the 2nd respondent for consideration regarding the disputes in educational agency. As per Section 53-A of the Tamilnadu Recognized Private Schools Regulations Act, 1975 such disputes would fall outside the purview of the 2nd respondent and only a competent City court can decide such issues. Therefore the writ appeal has to be decided on merits taking into consideration the rival contentions put forth here.

5. It is not in dispute that the original appointment made by the persons claiming under the respondents 3 and 4 is founded on the Trust Deed dated 7.8.2014. It is a new trust and no documents have been produced nor arguments advanced that the said Trust has been permitted and also as an organ and Synod of the India Evangelical Lutheran Church. If that be the case, the persons claiming administration under respondents 3 and 4 in this writ appeal pursuant to their writ petition, the order of which is under appeal, the appointment made by the respondents 3 and 4 based on the trust deed dated 7.8.2014 does not have any sanctity under law unless otherwise it is accepted by the Executive Committee of the IELC and on account of the pendency of several litigations regarding the same, it would be appropriate only if the said trust deed and the synod formed thereunder is decided by a competent civil court as being a part of the IELC. Otherwise, it would give rise only to further litigation and in the interest of the educational institutions, it would not be proper to leave the matter to be decided further before the 2nd respondent for the various reasons cited above. Therefore the appointment made vide Trust Deed dated 7.8.2014 can be countenanced only if a competent



civil court decides whether it is a part and parcel and a Synod of the IELC. That being the case, the impugned order dated 13.4.2018 passed by the 2nd respondent shall not be disturbed otherwise it would lead to chaos administration of the schools giving rise to multiplicity of proceedings. It can also be pointed out that the educational agency is IELC and it is riddled with several litigations.

6.In the result, the Writ Appeal is allowed and order passed in W.P.(MD)No.9935 of 2018 dated 27.04.2018 is hereby set aside and in the circumstance, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Director of School Education,
DPI Compound, Chennai - 6.
2. The District Educational Officer,
Cheranmahadevi, Office at S.N.High Road,
Tirunelveli.

+ 1 cc TO Mr.P.V.Sudhakar , Advocate in SR No. 66762
+ 2 ccs TO Mr.B.Saravanan , Advocate in SR No. 66779

vsv

AE/SKN RSK/SAR3/06.06.2018/5P/6C

Judgment made in
W.A. (MD) No.790 of 2018 and
C.M.P (MD) No.4645 of 2018 and
05.06.2018