

O.A. Nos.9 and 10 of 2020
in
C.S.No.8 of 2020

SENTHILKUMAR RAMAMOORTHY, J.

O.A. No. 9 of 2020 is filed for an interim injunction to restrain the respondents from preventing the applicants/plaintiff from participating in the CSI Synod Meetings to be conducted by the defendants in Trichy from 11.01.2020 to 14.01.2020 or on any subsequent dates. O.A. No. 10 of 2020 is filed for an interim injunction to restrain the respondents from conducting the CSI Synod meetings from 11.01.2020 to 14.01.2020 or on any subsequent dates without issuing prior notice to the applicant.

2. At the hearing yesterday, notice was taken on behalf of the first and fourth respondents by the learned counsel, Mr.Adrian D.Rozario, and on behalf of the second, third and fifth respondents by the learned counsel, M/s.D.Prabhu Mukunth Arunkumar and Mr.S.Bharathirajan.

3. At the hearing today, the learned counsel for the respondents did not file a counter affidavit. Nevertheless, arguments were advanced extensively both by the learned Senior Counsel for the applicant, the learned Senior Counsel for the

first and fourth respondents, the learned counsel who appeared for the second respondent and the learned counsel who appeared for the third and fifth respondents.

4. The learned Senior Counsel for the applicant, Mr.S. Prabhakaran, submitted that the applicant was elected as a member of the Tirunelveli Diocese at the election held on 23.04.2017. He also pointed out that the said election was conducted under supervision of the Court in 4 phases. In support of this submission, he referred to and relied upon the order dated 24.03.2017 in CRP (MD) No.408 of 2017 and 479 of 2017, the order dated 12.04.2017 in CRP (MD) No.816 of 2017 and the order dated 28.04.2017 in CRP (MD) No.816 of 2017, all of which preceded or pertained to the conduct of elections in 4 phases. He also referred to two subsequent orders, namely, the order dated 21.08.2018 in CRP (MD) No. 970 of 2018 and the order dated 05.08.2019 in W.P. (MD) No. 21134 of 2017.

5. By referring to particular paragraphs of these orders, the learned Senior Counsel for the applicant contended that the elections were held pursuant to and in terms of the said orders. He also pointed out that the Special Leave Petition bearing SLP No.10562 of 2017 before the Supreme Court against the order in CRP (MD) No.408 of 2017 was dismissed as withdrawn. He also referred to a Civil Suit that had been filed in relation to the election and to the judgement and

decree dated 30.11.2017, whereby the said suit was dismissed as having become infructuous. He also pointed out that the CRP against the said suit came to be dismissed by order dated 21.08.2018, which was also adverted to earlier.

6. In these circumstances, he submits that the applicant is a duly elected member of the Tirunelveli Diocese and, as such, he is entitled to participate at the proceedings of the CSI Synod to be held between 11th and 14th of this month. However, he points out that notices were issued to the other 23 Dioceses but not to the Tirunelveli Diocese. In this regard, he referred to the letter dated 13.12.2019, which is addressed to the members of the Karnataka Central Diocese. By referring to the third paragraph of the said letter, he pointed out that it is stated therein that the CSI Synod proceedings are intended for participation by delegates from all 24 Dioceses, including the Tirunelveli Diocese.

7. In view of the fact that notice was not given, he submits that the applicant was constrained to approach this Court, so as to safeguard his right to participate in the proceedings and to vote at the elections, which are a part of these proceedings.

8. In response and to the contrary, Mr. V.Prakash, the learned Senior Counsel for the respondents 1 and 4 made submissions. He raised three preliminary

objections to the suit and applications. His first preliminary objection is that the Church of South India is an unregistered and unincorporated body. Therefore, he submits that leave under Order I, Rule 8 of the Civil Procedure Code should have been obtained before instituting the suit. In support of this submission, he referred to and relied upon the judgement of this Court in ***Rev.Noble Gambeeran and others Vs. Peter P.Ponnan for himself and as representative of members of C.S.I Christian Community*** reported in **1999 (1) MLJ 392**, and, in particular, to paragraphs 19 and 21 to 23 thereof. In the said judgement, it was held that a suit against the C.S.I. Vellore Diocese should be instituted after obtaining leave under Order I, Rule 8 of the Civil Procedure Code. On the facts of that case, the Court also rejected the application for interim injunction on that basis.

9. The learned Senior Counsel for respondents 1 and 4 also relied upon a judgment of the Division Bench of this Court in ***The Executive Committee of the Synod Church of South India and another Vs. Rt.Rev.Dr.V.Devasahayam and others*** reported in **2009 (5) CTC 398 (Mad)** and, in particular, to paragraphs 15 to 17 and 20 thereof, wherein the Division Bench of this Court also held that leave under Order I, Rule 8 of the Civil Procedure Code is necessary for filing a suit against an unincorporated body.

10. The second preliminary objection of the learned Senior Counsel was that declaratory relief has been requested in the plaint and that until such declaration is issued, the application for interim injunction is not maintainable.

11. The third preliminary objection is that the prayer for permanent injunction, in the suit, and interim injunction, in the application, are of the same nature and that, therefore, interim injunction should not be granted because it would tantamount to allowing the suit. For this proposition, he relied upon the judgment, which is reported in **2008 (2) CTC 51 (Dr.M.Thirunavukarasu Vs. Indian Psychiatric Society Tribunal)**. In the said judgment, he relied upon paragraph 10 in specific.

12. On the merits of the dispute, the learned Senior Counsel referred extensively to the Constitution of the Church of South India. By referring to Chapter IX, Rules 13 and 15 therein, he pointed out that the Synod is the Supreme governing and legislative body of the Church. With specific reference to Rule 15 (c), he pointed out that the Synod is empowered to take steps as regards the Diocesan Council, if the Synod or the Synod Executive is satisfied that the said Diocesan Council is unable or unwilling to perform its functions as per the

Constitution or the Constitution of the Diocese. After referring to Rule 15(c), he pointed out that a decision was taken at the emergent Synod Executive Committee Meeting of the first respondent on 30.05.2017 to dissolve all committees, councils and other bodies in the Diocese of Tirunelveli.

13. The learned Senior Counsel pointed out that the said resolution of the Synod Executive Committee has not been challenged in legal proceedings till date. Therefore, he submits that the present application is not maintainable, inasmuch as by virtue of the said resolution, the applicant is no longer an elected member of the Tirunelveli Diocese. In this connection, he referred to the judgment in W.P.(MD).No.21134 of 2017 and, in particular, to paragraph 94 thereof, wherein the Writ Court held that there is no infirmity in the proceedings dated 30.05.2017 and 31.05.2017 of the CSI Synod.

14. On the basis of the above submissions, the learned Senior Counsel concluded his submissions by pointing out that there is no prima-facie case and that the balance of convenience is in favour of rejecting the application because only one applicant is before this Court, whereas about 400 persons constitute the electoral college at the proceedings of the CSI Synod.

15. The learned counsel for the second respondent made submissions

thereafter. He reiterated that the Synod is empowered under Rule 15 (c) of Chapter IX of its Constitution to dissolve the Tirunelveli Diocesan Council. He also referred to the judgment in W.P.(MD) No. 21134 of 2017, so as to point out that the Executive Committee of the Diocesan Council, which was elected on 23.04.2017, is required to function under the guidance, supervision and control of the court appointed administrators.

16. His next submission was that the applicant was put on notice regarding the proceedings of the Synod Executive Committee by way of a public notice and that, therefore, he cannot deny knowledge of the resolution of the Council. His last contention was that the Tirunelveli Diocese has not been joined as a party and that, therefore, the proceeding is not valid for non-joinder of a necessary party.

17. Mr.Selvaraj, the learned counsel made submissions, thereafter, on behalf of the third and fifth respondents. Once again, he reiterated that the Church of South India is an unregistered religious body. In fact, he referred to paragraph 2 of the plaint so as to point out that the plaintiff was also fully aware that the Church of South India is an unincorporated and unregistered body when the suit was instituted. Consequently, he submitted that Order I, Rule 8 of the Civil Procedure Code and Order 3, Rule 2 of the O.S. Rules of the Madras High

Court would be applicable and that, therefore, the present suit is not maintainable. He also pointed out that the local bodies under the Tirunelveli Diocese were elected in the year 2011 and that they cannot be allowed to remain in office interminably.

18. By way of rejoinder, Mr.S.Prabakaran, the learned Senior Counsel for the applicant referred to the judgment of this Court in *The Victoria Edward Hall Vs. M.Samraj (Madras)* reported in **2001 (3) CTC 129**, wherein, at paragraphs 12 and 14, it was held that an application for leave under Order I, Rule 8 of the Civil Procedure Code can be filed even at the appellate stage. He also relied upon a Division Bench judgment of this Court in O.S.A.Nos.88 and 98 of 2011, dated 09.04.2011, wherein the Division Bench held that Order I, Rule 8 of the Civil Procedure Code would be complied with in substance if the relevant parties are before the court. The last order that was relied upon by him was the order dated 21.03.2011 in A.Nos.1600 and 1628 of 2011 in C.S.No. 7 of 2011. In particular, he relied upon paragraphs 32 and 34 of the said order, whereby this Court held that Order I, Rule 8 of the Civil Procedure Code had been complied with in substance, on the facts of that case, and that, therefore, strict compliance cannot be insisted upon.

19. By way of a brief sur-rejoinder, the learned Senior Counsel,

Mr.V.Prakash, conceded that an application under Order I, Rule 8 of the Civil Procedure Code may be filed even subsequently. However, he submitted that until such application is filed, the suit is not properly laid and, therefore, no interim orders should be granted.

20. I considered the submissions of the learned Senior Counsel / counsel and examined the relevant records. For the limited purpose of the application for interim relief, the preliminary question to be considered is as to whether the interim application can be considered in spite of the alleged non compliance of Order I, Rule 8 of the Civil Procedure Code.

21. In this connection, it was held in *Rev.Noble Gambeeran* (cited supra) and *Thoothukudi Nazareth Diocese Rep.by its Treasurer & another Vs. The Church of South India & another* reported in 2009 (4) LW 742 that Order I, Rule 8 of the Civil Procedure Code is required to be complied with in order to institute a suit against an unregistered body.

22. However, in the judgment in *The Victoria Edward Hall* (cited supra), which was cited by the learned Senior Counsel for the applicant, it was held that such an application can be filed even at the appellate stage. Thus, the non-filing of an application under Order I, Rule 8 of the Civil Procedure Code does

not render the institution of the suit as null and void. Consequently, the question that is required to be considered is whether an application for interim injunction can be considered in this context.

23. On the facts of this case, it is seen that the suit has been laid against the Church of South India, represented by its General Secretary, the Most Rev. Moderator, the Rt.Rev.Deputy Moderator, the General Secretary and the Treasurer of the said Church of South India by arraying the above as parties both in the plaint and in the interim application. The said parties are also represented by Senior Counsel/Counsel. Therefore, it is clear that persons in a position of authority and responsibility, as regards the Church, are before this Court.

24. In these facts and circumstances, I am of the view that prejudice would not be caused, if the interim application is considered, notwithstanding the non filing of an application under Order I, Rule 8 of the Civil Procedure Code.

25. The second preliminary objection was that declaratory relief has been requested and that, therefore, the application for interim injunction should await such declaration. On a perusal of the prayer paragraph of the plaint, I find that the plaintiff has requested for a declaration that the Synod Meeting proposed to be conducted from 11th to 14th January 2020 without notice to the elected

members of the Tirunelveli Diocese to the Synod is illegal, null and void. Consequential permanent injunctions have also been requested in the said suit. Therefore, it cannot be said that the application for interim injunction cannot be considered until such declaratory relief is granted. Needless to say, such declaratory relief would have to await trial and final disposal. However, that does not deter the Court from considering the application for interim injunction.

27. The third preliminary objection is that the prayer in the plaint and in the application is the same. In view of the declaratory relief requested in the suit, I am of the view that the said contention is untenable.

28. The merits of the contentions remain to be considered and the main contention, in that regard, is that the Tirunelveli Diocesan Council and local bodies were dissolved by the resolution of the emergent Synod Executive Committee, which was held on 30.05.2017 and the admitted position is that this resolution has not been challenged in legal proceedings till date. Ordinarily, this would have been a reason to deny interim relief. However, the facts of this case should be taken into consideration before this aspect is decided for interlocutory purposes.

29. The learned Senior Counsel for the applicant adverted to about 5

orders of this Court in Civil Revision and Writ Petitions. These orders clearly reflect that the elections to the Tirunelveli Diocese were conducted pursuant to and in terms of the said orders. The orders in CRP(MD).No. 408 of 2017 and CRP.(MD).No.816 of 2017 (2 separate orders) are prior to the resolution of the Synod Executive Committee.

30. In this connection, the contention of the learned Senior Counsel for the respondents is that the Church of South India was not joined as a party in those proceedings. Nevertheless, it appears that the Tirunelveli Diocese was represented through the Bishop at the proceedings of the Synod and there is no indication in the resolution of the Synod Executive Committee that the proceedings of this Court were taken into consideration. The order dated 21.08.2018 in CRP (MD) No.970 of 2018 and the order dated 05.08.2019 in WP.(MD) No.21134 of 2017 are subsequent to the resolution of the Synod Executive Committee. In the order dated 21.08.2018, the decision of the Synod Executive Committee was expressly adverted to in paragraphs 58 and 59 and this Court held that the Synod cannot act as an appellate authority over the Court.

31. Similarly, in the order in W.P.(MD).No.21134 of 2017, at paragraph No.111, this Court held that the Synod has no role to play in conducting the election to the Diocesan Council, as it falls within the internal administration of

the Tirunelveli Diocese. On that basis, this Court affirmed the election of the newly elected Diocesan Council. This was done after taking note of the resolution of the Synod Executive Committee as would be evident from paragraph 93 of the said order. Therefore, in the peculiar facts and circumstances of this case, wherein the election was conducted pursuant to and in terms of the orders of this Court and keeping in mind that the election of the members of the Tirunelveli Diocesan Council has been affirmed in subsequent orders of this Court, I am of the view that this application is maintainable notwithstanding the resolution dated 30.5.2017 of the Synod Executive Committee.

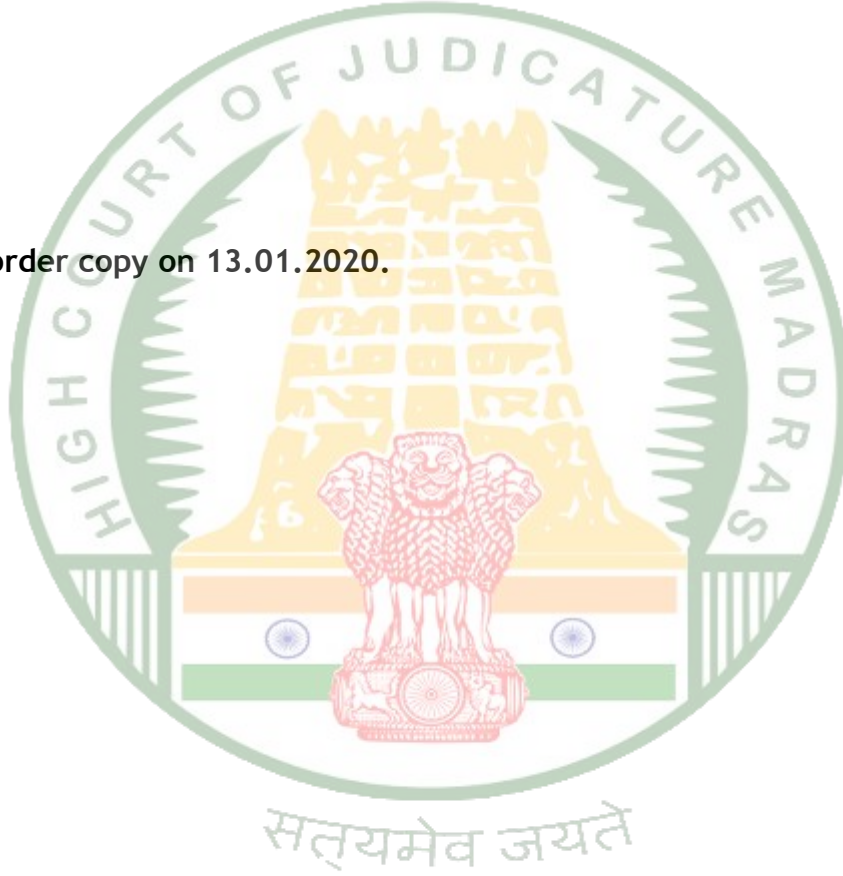
32. Moreover, I find from the documents on record that the applicant has made out a prima-facie case for the grant of interim relief because it is not disputed that the applicant was elected at the elections on 23.04.2017. In view of the fact of the meeting is going to be conducted between 11th and 14th of this month, the balance of convenience is in the applicant's favour and irreparable hardship would be caused unless the rights of the applicant are protected. Accordingly, there will be an order of interim injunction restraining the respondents from, directly or indirectly, preventing the applicant/plaintiff from participating in the CSI Synod Meetings to be conducted from 11.01.2020 to 14.01.2020 pending disposal of the suit.

33. In view of the above order, no order is necessary in O.A. No. 10 of 2020 and the said application is closed.

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10.01.2020

Note: Issue order copy on 13.01.2020.

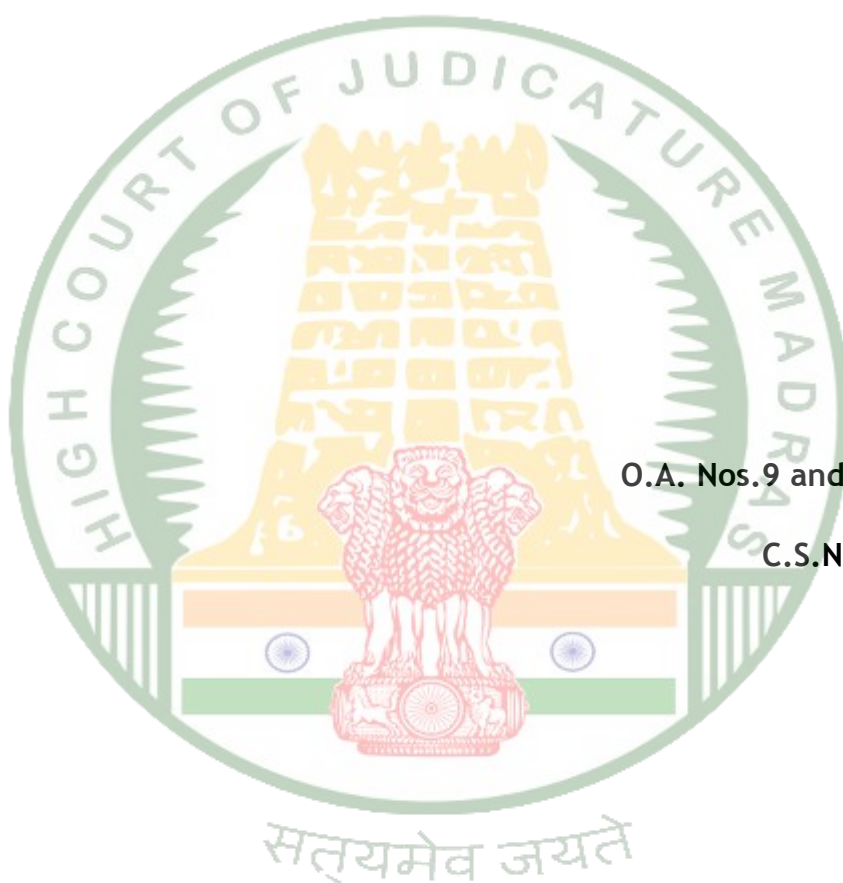


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