



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.13683 of 2020

WEB COPY

Dr.E.Pradeep Kumar

... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Department of Higher Education,
Fort St. George, Chennai - 9.

2.The Secretary to Government of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 9.

3.The Director of Collegiate Education,
EVK Sampath Building, 9th Floor,
College Road, Chennai - 6.

4.The Director of School Education,
DPI Complex, College Road,
Chennai - 6.

5.The Director of Elementary Education,
DPI Complex, College Road,
Chennai - 6.

6.Tinnevely Diocese Trust Association,
Rep. by the Administrators,
Old No.18, New No.19,
North-High Ground Road,
Palayamkottai, Tirunelveli - 627 002.

7.The Moderator,
CSI Synod, CSI Center,
No.5, Whites Road,
Royapettah, Chennai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the sixth respondent to consider the petitioner's representation dated 18.09.2020 to prohibit the teaching and non-teaching staffs receiving grants-in-aid from the Government from contesting the



upcoming Diocesan Elections.

For petitioner : Mr.H.Arumugam
for Mr.N.Vignesh

For Respondents : Mr.V.Srimathy, SGP -R1 to R5
Mr.Thangasivam -R6

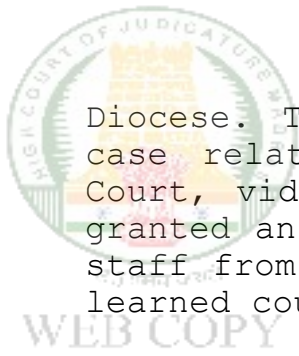
Mr.Veera Kathiravan, Senior Counsel - R7

ORDER

The petitioner has filed the present Writ Petition seeking a direction to the sixth respondent to consider his representation dated 18.09.2020 and prohibit the teaching and non-teaching staff receiving grant-in-aid at the hands of the Government from contesting the upcoming Diocesan Election.

2.The case of the petitioner is that he is a beneficiary of TDTA and a member of the CSI Tirunelveli Diocese and is regularly paying the stipulated Sangam amount. As per the Constitution of the Tirunelveli Diocese, voters for election are classified into four categories namely Clergy, Pastorate workers, Diocesan workers and Congregation representatives. The scale of representation of the Diocesan workers to be elected to the pastorates, is enumerated in Chapter X Rule 10 of the said Constitution and the term 'Diocesan workers' includes teaching and non-teaching staff of Diocesan institutions, such as, Schools and Colleges. It is the grievance of the petitioner that the teaching and non-teaching staff getting grant-in-aid through respondents 1 to 5 from the Government are contesting in the ensuing election and entering into the administration of the Diocese. According to the petitioner, Rule 14-A of the Tamil Nadu Government Servants Conduct Rules prohibits the Government staff from being a member or be otherwise associated with any organisation and it applies to the Diocesan institutions as well; and Rule 17 of the Constitution of the CSI Diocese also states that the rules relating to teachers and schools attached to the sixth respondent are subject to the Rules of the Educational Department. Hence, he made a representation dated 18.09.2020 to the learned Administrators, a copy of which was sent to all the Educational authorities, requesting to prohibit the teaching and non-teaching staff involving in the election. Finding no response on the said representation, the present writ petition came to be filed.

3.The learned counsel for the petitioner submitted that the teaching and non-teaching staff belonging to the sixth respondent are contesting in the upcoming Diocesan election, which is in violation of the Tamil Nadu Government Servants Conduct Rules and also the Tamil Nadu Recognised Private Schools Rules, 1974, besides contrary to the provisions of the Constitution of Tirunelveli



Diocese. The learned counsel further submitted that in a similar case relating to CSI Madurai Diocese, a Division Bench of this Court, vide order dated 04.11.2019 made in WP(MD)No.10132 of 2015, granted an interim order, restraining the teaching and non-teaching staff from contesting in the election for diocese posts. Hence, the learned counsel prayed for appropriate order in this writ petition.

4.To buttress the submission so made on the side of the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 5, submitted that there is a prohibition that no Government servant shall be member of, or be otherwise associated with any organisation.

5.On the other hand, the learned Senior Counsel appearing for the seventh respondent submitted that Rule 14A will have no direct application to the Diocese and it can be applicable only in a case where the organisation disturbs or likely to disturb public tranquility and hence, no direction is required in this writ petition.

6.The learned counsel for the sixth respondent submitted that the learned Administrators would consider the representation submitted by the petitioner and pass appropriate orders as per law.

7.Heard all the parties and perused the materials placed before this Court.

8.The prayer made in this writ petition is to direct the sixth respondent to consider the representation dated 18.09.2020 submitted by the petitioner, wherein it is *inter alia* stated that the New Educational Policy of the Government is to provide quality education and to raise the standard of education to cope with international level. The said objective shall not be achieved, if teachers are involved in Church activities and a person cannot serve two masters. Such kind of distraction will affect the students, who are studying in TDTA schools and colleges. Hence, the teachers may be properly guided and regulated to avoid church politics and election.

9.It is an admitted fact that as directed by this Court, the learned Administrators commenced the election process for the Diocese of Tirunelveli. According to the petitioner, the Government servants, teachers and other staff and workers, who are serving in the Government Aided Schools and Colleges under the management of TDTA in the Diocese, are involved in the electoral campaign and some of whom are also contesting in the election. Such activities are against the Government Code of Conduct and the order of the Division Bench dated 04.11.2019 passed in WP(MD)No.10132 of 2015.

10.This Court finds substance in the contention so made by the petitioner. Rule 14A of the Tamil Nadu Government Servants



Conduct Rules prohibits the Government servant from member of any communal organisation. For better appreciation, the said provision is extracted hereunder:

"Rule 14.A. Prohibition of membership of any Communal Organisation, etc:-

(i) No Government servant shall be a member of or be otherwise associated with any organisation.

(a) which promotes or attempts to promote on grounds of religion, race, place of birth, residence, language caste or community or any other ground whatsoever, disharmony or feelings of enmity hatred or ill will between different religious, racial language or regional groups or castes or communities: or

(b) whose activities are prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility or

(c) which organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence, or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence against any religious racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community.

(2) If any question arises whether any organisation falls under sub rule (1), the decision of the Government thereon shall be final."

Further, the Tamil Nadu Recognized Private Schools Regulation Rules, 1974 enumerates the Code of conduct for teachers and other persons employed in a private school, according to which, no teacher or other person employed in a private school shall contest or participate in or canvass for any elections. In addition, Rule 17 of the Constitution of the CSI Tirunelveli Diocese says that all the rules relating to teachers and schools are subject to the Rules of the Educational Department, without prejudice to the minority right guaranteed by the Constitution of India.

11. Pointing out the aforesaid provision, in similar circumstances, the issue relating to Diocese of Madurai Ramnad, the Division Bench of this Court passed an interim order on 04.11.2019 in WP(MD)No.10132 of 2015, the relevant portion of which is

reproduced below:



"6.The larger question that arises for consideration is that whether such teacher can do so, when she or he is paid salary from the Government. Prima facie, this Court is of the view that there will be a clear conflict of interest and hence, there will be an order restraining such of those persons holding teaching and non-teaching posts in any of the institutions coming under the control of the 7th respondent from contesting in the election for diocese posts and this interim order will operate till the official respondent file counter and the matter is heard and disposed of finally. It is made clear that this will have prospective effect."

It is also pointed out by the learned counsel for the petitioner that the District Educational Officer, Tirunelveli issued a proceedings in Na.Ka.No.3238/A4/2020 dated 16.11.2020, thereby instructing all the Headmasters of the Schools running in the District of Tirunelveli to follow the aforesaid order passed by the Division Bench of this Court, with respect to the ensuing election for the CSI Tirunelveli Diocese.

12.That apart, law is well settled that there is no fundamental right to contest any election and it is only statutory. The Supreme Court in **Jyothi Basu and others v. Debi Ghosal and others [1982 1 SCC 691]**, has held as follows:-

"8.A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

In **Krishnamoorthy v. Sivakumar and others, [(2015) 3 SCC 467]**, it was observed by the Supreme Court that "the right to contest an election is a plain and simple statutory right."

13.Such being the legal position, this Court is of the view that the grievance of the petitioner can be redressed by directing the authorities concerned to look into the same in a proper manner. Accordingly, the learned Administrators are directed to consider the representation dated 18.09.2020 submitted by the petitioner, in the light of the relevant statutory provisions as well as the order passed by the Division Bench referred to above and pass appropriate orders, through the Election Officers nominated by them, as early as



possible and communicate the same to the respective parties.

14.This writ petition is disposed of with the above direction. No costs.

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Sd/-

Assistant Registrar (Crl Side)

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/ /2020

Sub Assistant Registrar(CS)

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Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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Chennai - 6.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-24204[F] dated 07/12/2020)

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