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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.(MD)No.10071 of 2019
and
M.P.(MD) Nos.7840, 7841 and 12724 of 2019

India Evangelical Lutheran Church,
Rep. by the Administrator
Justice D.Hariparanthaman (Retd.),
No.47, Eldams Road, Teynampet,
Chennai - 18. ... Petitioner

- Vs -

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
St. George Fort,
Chennai - 9.

2.The Director of School Education,
DPI Campus,
College Road,
Nungambakkam,
Chennai - 6.

3.The District Educational Officer,
O/o the District Educational Office,
Valliyoor,
Tirunelveli District.

4.S.Vijayalakshmi,
District Educational Officer,
O/o the District Educational Office,
Valliyoor,
Tirunelveli District.

5.V.A.Raj ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the third respondent in his proceedings in ந.க.எண்.1827/அ2/17, dated 18.03.2019 and quash the same as illegal.

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For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents 1 to 4 : Mrs.S.Srimathy
Special Government Pleader

For Respondent 5 : Mr.B.Saravanan

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ORDER

The facts and the circumstances led to the filing of the Writ Petition are stated hereunder:

1.1.The petitioner is a religious body and a society registered under Tamil Nadu Societies Registration Act. The petitioner has three Synods within its religious umbrella, namely, Ambur Synod, Nagercoil Synod and Trivandrum Synod and there are aided schools in all the three Synods which come under the control of the society. In 2014, there was a dispute as the society was divided into two opposing groups. One group is headed by Rev.Y.Suvisesha Muthu and the other led by one K.Bau lSundar.

1.2.In view of the division in the society, each group held elections separately to the society and in the result, there are two set of office bearers. The dispute in this Writ Petition is in relation to Nagercoil Synod. The term of office bearers in the said Synod in 2014 was for a period of two years and in 2016, when elections were due, two set of office bearers were elected. This Court was approached by the warring groups in regard to the validity of the election and the Writ Petitions were heard by the Division Bench and this Court vide order dated 31.07.2018 in TR.C.S No.741 of 2017 was pleased to appoint former Judge Mr.D.Hariparanthaman as the Administrator to the said society and a group led by Rev.Suvisesha Muthu was directed to assist him in discharging his functions as an interim Administrator.

1.3.As the society was divided, the approval of the Correspondents to various schools coming under Nagercoil Synod was also brought under continuous disputes between two factions and several writ petitions were also filed. The Correspondent appointed by each group claiming to be the legitimate Correspondent.

1.4.The District Education Officer, Cheranmahadevi, by his proceedings dated 31.04.2018 approved appointment of one Mr.P.Manuel Yesuraj as Correspondent of Concordia schools. The appointment of the said Correspondent was also questioned before this Court and also ultimately, taken to the Hon'ble Supreme Court. As the dispute was pending, the schools were also brought under direct payment system.

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1.5.The Hon'ble Supreme Court has passed an order on 06.07.2018 directed the District Education Officer concerned to decide the issue as to the appointment of the Correspondent. Thereafter, an order was passed on 04.10.2018 that as Administrator in the meanwhile was appointed by this Court had taken over the administration, the Administrator shall decide the Correspondent.

1.6.In the meanwhile, there was another separate group which was formed and separate election was conducted that was also the subject matter of challenge in suit proceedings in 2018 in the District Munsif Court, Valliyoor. After the Administrator took over the administration, he appeared to have cancelled all those appointments vide his order dated 23.11.2018 and requested the educational authorities to bring all the schools under Direct Payment System and accordingly, all the schools were brought under Direct Payment System.

1.7.While matter stood thus, the fifth respondent claiming to be the Correspondent of Concordia Higher Secondary School at Valliyoor and Concordia Higher Secondary School at Vadakankulam, approached the District Educational Officer and he vide his proceedings dated 04.10.2018 rejected the claim of the petitioner on the ground that the concurrence of the Administrator was a must for approval and in that context, rejected the claim of the fifth respondent. Contrarily, the third respondent vide her order dated 18.03.2019 has approved the fifth respondent as Correspondent of both the schools referred to above.

1.8.At this, the Administrator of the society, the petitioner herein, wrote a detailed letter to the third respondent to recall the order dated 18.03.2019 as his concurrence had not been obtained and therefore, the order was *per se* illegal and liable to be withdrawn. As no action was forthcoming, the petitioner society represented by interim Administrator appointed by this Court is before this Court.

2.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner narrated the above facts and submitted that the impugned order passed by the third respondent is patently illegal and has to be necessarily set aside. When this Court has appointed a former Judge of this Court as Administrator of the society, without obtaining the concurrence, the third respondent ought not to have approved the appointment of the fifth respondent, as the very basis of his appointment was questionable and invalid. This Court in fact vide order dated 31.07.2018 while appointing the Administrator has clearly held in paragraph 7 which is extracted hereunder:

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> "7.In view of the same, any decision touching upon the Church shall be made only with the approval of the Administrator appointed by this Court. All the decisions and the affairs of the Church by the elected office bearers will be taken into consideration only with sanction of the Administrator. His concurrence and decision is final."

In the light of the above direction, the third respondent's order cannot be countenanced in law or on facts.

3.Notice was ordered in this Writ Petition and Mrs.S.Srimathy, learned Special Government Pleader appeared for the respondents 1 to 4 and Mr.B.Saravanan, learned Counsel appeared for the fifth respondent.

4.In one of the earlier hearings, this Court expressed its displeasure as to how the third respondent was emboldened to approve the appointment of the fifth respondent in the facts and circumstances of the case. The Court expressed its reservation of the legality of the order dated 18.03.2019 approving the fifth respondent as Correspondent of the schools and in fact, wanted to ascertain under what circumstances the order was passed by the third respondent.

5.However, when the matter is taken up for hearing today, on behalf of the official respondents, Mrs.S.Srimathy, learned Special Government Pleader would submit that the order passed by the third respondent dated 18.03.2019 is invalid and has to be set aside. The submission has been made on the ground that repeatedly this Court in various disputes arising in respect of the election of office bearers, appointment of Correspondent etc., the interim Administrator had been given the ultimate authority and the Courts have repeatedly directed the aggrieved persons to approach the Administrator for redressing their grievance. That being the case, without the concurrence of the Administrator, the approving authority, namely, the third respondent ought not to have approved the fifth respondent who represented an another faction of warring groups fighting with each other to take control of the society and the institution functioning under it.

6.Considering the impossibility of sustaining the impugned order passed by the third respondent, on behalf of the official respondents, a fair submission has been made by the learned Special Government Pleader that the impugned order of the third respondent is invalid and has to be set aside. In the circumstances, no further adjudication is called for in respect of the *lis* raised in this Writ Petition. In view of the official respondents conceding to the illegality of the order passed by the third respondent, any submissions to be made on behalf of the

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fifth respondent would have no significance or relevance.

7.For the above said reasons, the impugned order passed by the third respondent in his proceedings in நா.க.எண்.1827/அ2/17, dated 18.03.2019 is hereby set aside. The Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

To
1.The Secretary to Government,
School Education Department,
St. George Fort, Chennai - 9.

2.The Director of School Education,
DPI Campus, College Road,
Nungambakkam, Chennai - 6.

3.The District Educational Officer,
O/o the District Educational Office,
Valliyoor, Tirunelveli District.

COPY TO
THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN (FORMER JUSTICE),
THE ADMINISTRATOR,
INDIA EVANGELICAL LUTHERAN CHURCH,
NO.47, ELDAMS ROAD, TEYNAMPET,
CHENNAI - 18.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-10478[F] dated 11/03/2021)
+1 CC to M/s.SPL GP (SR-11205[F] dated 15/03/2021)

W.P(MD)No.10071 of 2019
11.03.2021

ES(CO)
TR(27.04.2021) 5P 7C

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