



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.11.2021
DELIVERED ON : 26.11.2021
CORAM :
THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.M.A. (MD) .No.619 of 2021

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1.The Tamil Evangelical Lutheran Church (TELC),
Rep. By its Secretary,
A.Mehar Antony.

2.A.Maher Antony ,
Secretary, Church Council,
Tamil Evangelical Lutheran Church
...Appellants/Petitioners 1 & 2/
Plaintiffs 1 & 2

Vs.

1.Rt. Rev.D.Daniel Jayaraj,
Bishop of Tranquebar President,
Tamil Evangelical Lutheran Church.

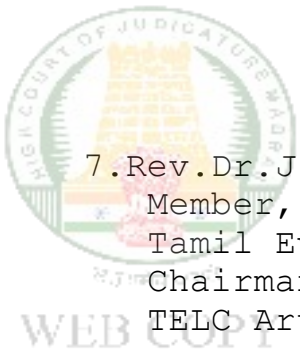
2.Rev.J.Chelladurai
Member, Church Council,
Tamil Evangelical Lutheran Church,
Chairman/Pastor, TELC Church.

3.D.Wilfred Daniel,
Member, Church Council,
Tamil Evangelical Lutheran Church.

4.Rev.S.Samuel Abraham,
Vice President,
Church Council,
Tamil Evangelical Lutheran Church,
Chairman/Pastor.

5.D.Thangapazham,
Member,
Church Council,
Tamil Evangelical Lutheran Church.

6.R.Benjamin Jeyaraj,
Tamil Evangelical Lutheran Church. ...Respondents/
Respondents /Defendants



7.Rev.Dr.J.G.Jacob Sundar Singh,
Member, Church Council,
Tamil Evangelical Lutheran Church,
Chairman/Pastor,
TELC Arulnathar Church.

8.K.Albert Inbaraj,
Member, Church Council,
Tamil Evangelical Lutheran Church.

... Respondents / Petitioners 3 & 4/
Plaintiffs 3 & 4

[Amended as per Order in I.A.No.09/2021 dated 27.04.2021]

PRAYER: Civil Miscellaneous Appeal filed under Section 104 r/w Order 43 Rule 1 of Civil Procedure Code, to set aside the fair and decreetal order, dated 23.06.2021 passed in I.A.No.01 of 2020 in O.S.No.253 of 2020 by the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli and allow this appeal.

For Appellants	: Mr.P.H.Aravindh Pandian, Senior counsel for Mr.Duraikkan S.Phillip
For R-1	: Mr.Issac Mohanlal, Senior Counsel for Mr.R.Baskaran
For R-2 to R-6	: Mr.K.Viralinathan
For R-8	: Mr.V.Ragavachari for Mr.G.Thalaimutharasu
For R-7	: No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order, dated 23.06.2021 in I.A.No.01 of 2020 in O.S.No.253 of 2020 passed by the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli.

2.The appellants/plaintiffs have filed a suit in O.S.No.253 of 2020 on the file of the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli, for passing temporary injunction restraining the Respondents/Defendants or any one claiming any right under them from interfering with the functioning of the Plaintiffs as members and office bearers of Church Council for the Triennium 2019 - 2022 and carry out their duties as per Rules either by issuing any Circular or Letter to the Pastors/Chairman/Candidates of Pastorates/Office Bearers of Churches, Pastors/Church Secretaries/Commissioners/Deacons/Ministers/Service Managers/Staff or members of TELC without the approval of the Church Council or in any manner whatsoever till

the disposal of the suit.

3. During the pendency of the aforesaid suit, the appellants/petitioners have filed a petition in I.A.No.1 of 2020 in O.S.No.253 of 2020, under Order 39 Rule 1 and 2 and Section 151 of Civil Procedure Code and the same was dismissed by the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli, with directions. Aggrieved over the same, the appellants are before this Court.

4. Heard on either side. Perused the material documents available on record.

5. This Civil Miscellaneous Appeal is filed on the ground that the reasoning given by the Court below while passing an order in the Interlocutory application is liable to be set aside. The Court below has failed to appreciate that the Appellants have established prima facie case and also proved the urgency and balance of convenience in their favour and that irreparable loss and irretrievable injustice will be done to the TELC members by not allowing the said I.A. The Court below has failed to note the fact that after his superannuation as on 05.03.2020, the 1st respondent has no power to dissolve the duly elected Church Council for his personal advantage.

6. The appellants/petitioners/plaintiffs have filed a petition in I.A.No.1 of 2020 under Order 39 Rule 1 & 2 and Section 151 of Civil Procedure Code, to pass temporary injunction restraining the respondents/defendants or any one claims any right under them from interfering with the functioning of the plaintiffs as members and office bearers of Church Council for the Triennium 2019 -2022 and carry out their duties as per the Rules either by issuing any Circular or letter to the Pastors/Chairman/Candidates of Pastorates/Office Bearers of T.E.L.C/Boards/Station Managers/Staff or Members of T.E.L.C without the approval of the Church Council or in any manner whatsoever till the disposal of the suit.

7. Already, the 1st petitioner herein has filed a petition in I.A.No.2 of 2020 in O.S.No.253 of 2020 under Order 7 Rule 11 petition to reject the plaint and the same was allowed on 21.12.2020. Aggrieved by the order the appellants herein/plaintiffs have filed an appeal in A.S.No.18 of 2021 before this Court and the same was allowed on 19.03.2021 with direction to dispose the suit, within a period of six months.

8. Whether the 1st respondent has power to invoke Rule 128(12) of Church Rules and also has power to issue emergency circular invoking Rule 194 of Church Rules 1991? are the main issues to be decided in the suit.

9. In, I.A.No.1 of 2020, the appellants/plaintiffs seeking a



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relief of temporary injunction restraining the respondent / defendants from interfering with the function of the plaintiffs as members and office bearers of Church Council for the Triennium 2019-2022. Only, after deciding that whether Bishop has power or not, other consequential relief can be given.

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10. But, *prima facie* the Church Council was elected by a election under the supervision of retired Hon'ble Justice of this Court, till the period upto 2022.

11. As per Section 128(12) only subject to the approval of Church council the President(Bishop) has right to assume the functions of any of the office bearers of Church Council. Therefore, without the approval of the Church Council the Bishop cannot hold the power of any are of the office bearers.

12. The 1st respondent has completed his age of 65 years on 05.03.2020. As per Rule 161 (C) the Bishop shall retire on 14th January 2021, after he has completed 65 years of age or 10 years of service as Bishop which ever is earlier. So, the 1st respondent has to retire on 14.01.2021. The 1st respondent wants to extend his period upto 67 years.

13. Further, the 1st respondent has issued a letter, dated 30.10.2020 and emergency circulars invoking Rule 128(12) of the Church Rules claiming to assume the functioning of Secretary Rule 128(12) can be invoked subject to the approval of Church Council. But, Church council disapprove the invoking of Rule 128(12) on 29.10.2010.

14. Now, the period of Bishop has also been completed. At this stage, whether he can invoke Rule 128(12) of Church Rules.

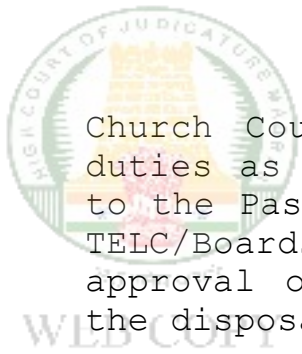
15. The 1st respondent has to establish Special Emergency warranted to invoke Rule 128(12).

16. After trial only, these issues can be decided in the suit. Already, by order, dated 19.03.2021 in A.S.No.18 of 2021 this Court has issued direction

to the trial Court to dispose of the suit in O.S.No.253 of 2020 and complete the trial within a period of six months.

17. The Church Council is the elected body and has period till 2022. The 1st respondent has to retire on 14.01.2021. The 1st respondent has to act only with the approval of Church Council.

18. Considering these aspects, this Court is inclined to grant <https://hcmcs.com/servingusers/> on restraining the Respondents/Defendants or any one claiming any right under them from interfering with the functioning of the Plaintiffs as members and office bearers of



Church Council for the Triennium 2019-2011 and carry out their duties as per the Rules either by issuing any Circular or Letter to the Pastors/Chairman/Candidates of Pastorates/Office Bearers of TELC/Boards/Station Managers/Staff or Members of TELC without the approval of the Church Council or in any manner whatsoever till the disposal of the suit.

19. Finally, this Civil Miscellaneous Appeal is allowed by setting the aside the fair and decreetal order, dated 23.06.2021 in I.A.No.01 of 2020 in O.S.No.253 of 2020 passed by the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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

The I Additional District and Sessions Judge (PCR),
Tiruchirappalli.

+3 CC to M/s.DUAIKKAN S. PHILLIP, Advocate (SR-36007[F] dated 26/11/2021)

+1 CC to M/s.K. VIRALINATHAN, Advocate (SR-36161[F] dated 26/11/2021)

**C.M.A. (MD) .No.619 of 2021
26.11.2021**

KM(CO)

SB(10.12.2021) 5P 6C