

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FORM ORDER NO.110 OF 2022

ALONG WITH

INTERIM APPLICATION NO.600 OF 2022

IN

APPEAL FORM ORDER NO.110 OF 2022

1. Rt. Rev. Prakash Dinkar Patole .. Appellants
2. Rv. Rajendra Jeevanrao Bhosle

Versus

1. The Most Rev. Dr. Prem Chand Singh .. Respondents
2. Rt. Rev. Bijay Kumar Nayak
3. The Revt. Shailesh Dennis Lall
4. Subrata Gorai
5. The Church of North India Synod
6. Suresh Carol Jacob
7. Joshua C. Ratnam
8. Sanjay Ezekaiel Singh

...

Mr. Mayur Khandeparkar i/b. Mr. Chaitanya Nikte along with Mrs. Sneha Bhang and Mr. Hitanshu Jain for appellants.

Mr. Ravi Kadam, Sr. Advocate along with Adv. Dharendra Sinha, Adv. Saket Mone, Adv. Anshuman Singh, Adv. Abhishek Salian i/b. Vidhi Partners for Respondent nos.1 to 5.

Mr. Saket Mone for Respondent no.6.

Mr. Anshuman Singh for Respondent no.7.

Mr. Dharendra Sinha for Respondent no.8.

CORAM: BHARATI DANGRE, J.
RESERVED : 5th APRIL, 2022
PRONOUNCED: 14th JUNE, 2022.

JUDGMENT:-

1 The present Appeal is filed by the appellant/plaintiff being aggrieved by the order dated 12/1/2022 passed by the City Civil Court, Greater Mumbai, thereby rejecting his Notice of Motion seeking an order, restraining the defendants from acting on the letter dated 22/10/2021 and from taking any further action.

Heard learned counsel for the respective parties.

2 The appellants are the original plaintiffs, who instituted S.C. Suit No.2122/2021 under Section 34 and 36 of the Specific Relief Act, before the Mumbai City Civil Court, seeking multiple reliefs.

It would be appropriate to make reference to the grievance raised in the said Suit by the plaintiffs against the defendants and the background in which the relief was claimed from the City Civil Court.

The plaintiff no.1 is Bishop of Bombay Diocese and Church of North India, whereas the plaintiff no.2 is the Secretary

of Diocese of Bombay. The plaintiff no.1 claimed to be elected as Bishop of Bombay Diocese in the Church of North India at the episcopal election held on 9/6/2006, in accordance with the procedure and rules for election of Bishops in the Church of North India as stipulated by the Constitution of the Church of North India. The plaintiff no.1 further assert that in his capacity as Bishop of Bombay Diocese, he is also the ex-officio Chairman of six institutions and in this capacity, he is associated with day to day working of the institutions run under aegis of the Bombay diocese.

The plaintiff no.1 claim that he has nurtured all these institutions and under his guidance, the institutions have progressed and from the date of he assuming the office of bishop, he has discharged all his duties and exercised all his powers in the interest of the Church of North India. The plaintiff no.1 also claim that he has exercised his powers as Bishop coupled with his right, duties and responsibility attached to that office, in exercising his jurisdiction as Bishop of Bombay in the Church of North India within his territorial jurisdiction, which church is the legal successor of the six churches, which unitedly form the church of North India, which came into being on 29/11/1970.

3 The plaintiff refer to the hierarchy of the Church of North India which was impleaded as defendant no.5 through Synod, an administrative and legislative body, which function through three sub organizations, operating at three levels i.e.

Synod, headed by the Moderator diocese which functions and work under the Church of North India and is headed by a bishop and the Pastorate headed by the Presdyter– incharge.

After highlighting the structural hierarchy, the plaintiff has pleaded that the executive committee of the Synod constituted under Chapter IV, Section 9 had its fixed tenure of three years which could have been extended by further period of one year. Pleading that the Moderator of the Synod had a co-extensive term with the executive committee, which has to an end on 3/10/2020, it is pleaded that, since the executive committee could not held the elections due to Covid-19, it extended the holding of the meeting by further period of one year i.e. by 3/10/2021, and thereafter, it is asserted that the powers of the defendant no.1 has come to an end, and from 4/10/2021, the defendant no.1 could not have acted as a Moderator of the Synod of defendant no.5 and so, is the case of the Deputy Moderator of Synod.

4 Relying upon the Constitution of the Church of North India and the bye-laws, the plaintiff pleaded that every diocese of Synod is required to take Annual General Meeting once in three years. However, the Bombay dioceses in order to afford an opportunity to every Member, holds a council meeting once in every year. Being the bishop of Bombay diocese, the plaintiff no.1 decided to hold an Annual General Meeting on 25/9/2021 and the venue was scheduled to be Hume High

School and Junior College, Byculla, Bombay. However, on account of the restrictions imposed due to the existing Covid-19 situation, when permission was sought for the purpose of organizing the Annual General Meeting, the seating capacity being restricted, it was not possible to hold the Annual general Meeting, which came to be postponed. The Executive Committee of Synod was aware of the said development and the AGM scheduled on 25/9/2021 came to be cancelled, since the Constitution of the church of North India contemplated a coram of 1/3rd members being present and with the restricted capacity, due to covid pandemic, conduct of meeting was not possible, and the Synod was duly intimated.

5 The plaintiff was communicated a letter dated 22/10/2021, under the letter head of Synod of the Church of North India and under the signature of Rev. Shailesh D. Lall, the General Secretary of the Synod of Church of North India, New Delhi. The said letter gave reference to the 264th ordinary meeting of the office bearers of defendant no.5, which took place on 22/10/2021 and the plaintiff pleaded that the said office bearers are none else than defendant nos.1, 2, 3 and 4.

The said communication, constrained the plaintiff to approach the Civil Court, seeking a relief of its cancellation, by pleading absence of jurisdiction to take such a decision. The plaintiff urged that the impugned order is bad and illegal, null and void, arbitrary and without application of mind, having

issued in gross violation of the Constitution of the Church of North India and bye-laws and also the green book of the CNI. The plaintiff also pleaded that the action taken by the impugned letter dated 22/10/2021 was contemplated without any inquiry or issuance of show cause notice to the plaintiffs and other elected executive members and on this ground itself, the said communication/letter is illegal and null and void.

6 By the impugned communication dated 22/10/2021, which was communicated to the plaintiff no.1, certain serious allegations/accusations were levelled against the plaintiff no.1 which was based on a report dated 30/9/2021 submitted by the observers who came to be appointed to supervise the AGM of the Bombay Diocesan Council to be held on 25/9/2021. Pursuant to the submission of the report, CNI, Synod proposed proper investigation to be initiated by the Synod office bearers to bring normalcy in the diocese, since note was taken of the CNI Constitution violation. The office bearers, CNI Synod resolved to receive the above report and recommendations of the observers.

7 On due consideration of the same and after meaningful discussion of the observations and recommendations, the following decision was taken :-

“Finally, after due consideration and discussion on the observations and recommendations made by the Observers, CNI Synod and the unpleasant email of the Revd. Rajendra

J. Bhonsle, Diocesan Secretary, BDC – the Office Bearers, CNI Synod noted that there is an apparent gross violation of the Constitution of the Church of North India, which is likely to aggravate the problems and chaso in the Diocese of Bombay, CNI. It was also noted that the derogatory words used against the Observers appointed by the CNI Synod tantamount to insubordination to the supervisory authority of the CNI Synod. Thus, the Office Bearers, CNI Synod decided as under:-

1. Resolved to remind the Office Bearers and the Members of the Executive Committee, Bombay Diocesan Council that as per the CNI Constitution Part-II, Chapter-IV, Section-1, SYNOD: ITS STATUS AND AUTHORITY: Clause-1, page 96 – the organ of the whole church comprising all dioceses, is the Synod which is the supreme, supervisory legislative and executive body of the church and final authority in all the matters pertaining to the church. Resolved to remind the Office Bearers and the Members of the Executive Committee, Bombay Diocesan Council that as per the CNI Constitution Part-II, Chapter-III Section -IV, RELATIONSHIP OF THE DIOCESAN COUNCIL WITH THE SYNOD: Clause -1, page 64 A Diocesan council shall be subject to such ruling as the Synod may give. Resolved further to affirm that CNI Synod had exercised its above cited constitutional supervisory authority in appointing the Observers, to which the Diocese is expected to be subjected to.

2. Noted that based on the report and the recommendations made by the observers CNI Synod, it appears that there are issues with the leadership of the Diocesan Bishop, the Rt. Revd. Prakash D. Patole and that the Diocesan Executive Committee or its Office Bearers may have been elected / appointed unconstitutionally. Noted further that the content of the email dated 19th October, 2021 by the Diocesan

Secretary, Bombay Diocesan Council, seems to questions the supervisory authority of CNI Synod. Thus, based on the report and the recommendations made by the Observers, CNI Synod and as per the provision in the CNI Constitution (Part-II, Chapter-IV, Section -X, FUNCTIONS OF THE EXECUTIVE COMMITTEE, Clause-8, page 118 : If in the opinion of the Executive Committee of the Synod, a Diocesan Council or a Synodical Board or any standing committee or Commission is not functioning in accordance with the provisions of the Constitution, the Executive Committee shall have the authority to enquire into its affairs through a Commission or a Committee of its own), the Office Bearers, CNI Synod resolved to appoint w.e.f 22nd October, 2021 an Inquiry Committee, probe into the constitutional anomalies and allegations/complains made against Bishop Prakash D. Patole and the Executive Committee, Bombay Diocesan Council Resolved further that the above Inquiry Committee will consist of following as members:

- i) The Rt. Revd. B. K. Nayak, Deputy Moderator, CNI Synod*
- ii) Mr. Suresh C. Jacob, Member of the Executive Committee, CNI Synod (as Convener, Inquiry Committee)*
- (iii) Mr. Joshua Rathnam, Chief Functionary, CNI-SBHS.*
- iv) Mr. Sanjay Singh, Managing Director, UCNITA*

3. Based on the report and the recommendations made by the Observers, CNI Synod and in order to provide an unhindered environment to the Inquiry Committee to conduct a fair probe, the Office Bearers, CNI Synod resolved to send the Rt. Revd. Prakash D. Patole on leave of absence w.e.f. 22nd October, 2021 till the pendency of the above Inquiry Committee and the decision of the Executive Committee, CNI Synod thereof.

4. Resolved further to request the Rt. Revd. Prakash D. Patole (on leave) and all those concerned in Bombay Diocesan Council to cooperate with the above Inquiry Committee.

5. Noted that as per CNI Constitution, it is the prerogative of the Moderator CNI Synod to appoint a Moderator's Episcopal Commissary or Moderator's Commissary, whenever the need arises as per the provisions in the Constitution of CNI, (Part II, Chapter IV, Section VII, Sub-Section B, Clause-9).

6. Based on the report and the recommendations made by the Observers CNY Synod and in order to ensure an unhindered environment to the Inquiry Committee to conduct a fair probe, the Office Bearers, CNI Synod further resolved to dissolve the Bombay Diocesan Executive Committee w.e.f 22nd October, 2021 and to appoint an Ad-Hoc Committee as per the provision of CNI Constitution, clause 37, Section IV, Chapter IV, Part II w.e.f. 22nd October, 2021 for a period of six months.”

8 The aforesaid communication gave requisite cause for institution of the Suit and the plaintiff sought the following declaration.

b) That it be declared that the impugned letter dated 22.10.2021 issued by the Defendant No.3 and all the decisions taken thereunder thereby (i) appointing the Observers, (ii) appointing the Inquiry Committee w.e.f. 22.10.2021, (iii) sending the Plaintiff No.1 on leave of absence w.e.f. 22.10.2021 till the pendency of the

Inquiry Committee and the decision of the Executive Committee, CNI Synod, and, (iv) dissolving the Bombay Diocesan Executive Committee w.e.f 22.10.2021, (v) appointing Ad-hoc Committee Members as per the provision of CNI Constitution Clause 37, Section IV, Chapter IV Part II for a period of six months with 15 members, and, (vi) all the actions/decisions/ resolutions taken by the Defendants pursuant to the impugned letter dated 22.10.2021 w.e.f 22.10.2021 till now, pursuant to the Impugned Letter dated 22.10.2021, are illegal, null and void, arbitrary, non-est and perverse and not in accordance with the Constitution of The Church of North India and Bye-Laws are framed.

(c) That the impugned letter dated 22.10.2021 issued by the Defendant No.3, being Ex.C to the plaint, and all such actions and decisions taken pursuant to the impugned letter dated 22.10.2021, be set aside and cancelled;

(d) That this Honourable Court be please to pass an order of permanent injunction restraining the Defendants No.1 and 2 from acting as Moderator and Deputy Moderator of the Synod CNI from 04.10.2021 as their term has already expired on 03.10.2021.

During the pendency and final hearing of the Suit, stay of the effect, implementation and enforcement the decision taken pursuant to the impugned letter dated 22/10/2021 was also sought for.

9 In the Suit filed by the plaintiff, the Church of North India, Synod was impleaded as defendant no.5 whereas defendant

nos.1 and 2 are the bishops of Jabalpur diocese and Bishop of Phulbani diocese respectively. The General Secretary of the Synod of Church of North India was impleaded as defendant no.3, whereas the treasurer of the Synod of Church of North India was impleaded as defendant no.4. The Director of the United Church of North India Trust Association was impleaded as defendant no.6 along with Chief Functionary and Secretary of Synodical Board of Health Services of Diocese, Pune, being added as defendant no.7. The Managing Director of United Church of North India was impleaded as defendant no.8.

10 In the Suit so filed, a Notice of Motion No.2772..... was taken out by the plaintiff, seeking a restraint order by way of injunction from obstructing/interfering, preventing the plaintiffs and all the members related to Bombay diocese from doing their acts/functions/duties which they are entrusted and entitled to do as per their respective post in Bombay diocese. The implementation and enforcement operation of the impugned letter dated 22/10/2021 was also sought to be stayed.

In support of the Notice of Motion, the plaintiff no.1 filed an affidavit alleging that the issuance of the impugned letter is biased, high handed and arbitrary action which apart from following the principles of natural justice, also violated constitution of Church of North India and the bye-laws. In the affidavit, an apprehension was expressed to the effect that pursuant to the issuance of the said communication, the Adhoc

Committee which has been constituted illegally in an attempt to approach the Banks of the Bombay diocese in order to withdraw the funds from the bank being operated by the plaintiffs by falsely claiming that they are office bearers of the Bombay diocese. The affidavit specifically pleaded that the Adhoc Committee illegally appointed by the defendants is playing fraud on the plaintiff and representing at large to be the Members of Bombay diocese and are threatening to take charge of the entire functionaries of Bombay diocese and are in an attempt to oust the lawful members out of the Church premises. Apprehending harm and physical damage to the plaintiffs as well as to the Executive Committee Members, the Notice of Motion pray for a direction to the defendants not to act as per the impugned letter till the decision of the Suit.

11 It is on this draft Notice of Motion the City Civil and Sessions Court granted ad-interim injunction on 29/10/2021 by recording that the defendants have not given any notice or opportunity to the plaintiffs to submit their reply nor heard the plaintiffs which has clearly violated the principles of natural justice and since the impugned communication cast a stigma on the reputation of the plaintiff, holding that the balance of convenience in favour of the plaintiff, the ad-interim injunction came to be granted. However, on 12/1/2022, the Notice of Motion No.2772/2021 was heard on merits and the City Civil and Sessions Court, Greater Mumbai, recorded a finding that

there is no merit in the contention of the plaintiff, seeking an injunction and particularly the objection, that the defendants had no authority and power to take any action against the present plaintiffs. Recording that by the impugned order, the defendants had send the plaintiffs on compulsory leave till conclusion of the employee and none of their entitlements arising out of their office have been taken away, the Notice of Motion came to be rejected.

It is this order which is the subject matter of Appeal before me.

12 The respective counsel have placed before me the parent documents governing the relationship inter-se between various organs/heads through which the Church of North India exercise its power i.e. Constitution of the Church of North India. The exhaustive document proceeds on a basis that the Church of North India is part of the one Holy Catholic Apostolic Church, the body of Christ, which He is building up out of persons of all generations and races. The relation to the Church Universal recognizes the Church of North India as a church by reason of what it has received from God in Christ through bringing together into one life, several traditions of the churches that have united to constitute it and this heritage is a fruit of the continuous working of Gods spirit in his Church in all ages from Apolostic times through the reformation and down to the present day.

The Constitution thus acknowledges the Church of North India as the body of Christ and its members as members of His Body, and the members, according to the Will and purpose of the God are baptized into the name of God.

The Constitution, therefore, bind all the members of Church of North India and accept and admit as its members to the full privileges and obligations of membership to those who are normal resident in the area and baptized and have been admitted by confirmation or other such services to participation in Holy Communion and who shall abide by the Constitution of the Church.

13 The said document in Para-2 provides for the organization and administration of the Church, which include the diocese, the pastorate and the Synod.

The Synod is recognized as the supreme, supervisory, legislative body of the church and the final authority in all matters pertaining to church. The Synod is responsible for fulfilling the objects and purposes of Church of North India i.e. to proclaim by work and deed the gospel of Jesus Christ, who is the lord and Master of the Church for the Salvation and good of all mankind through various services which may include educational, medical, social, agricultural and other services and also through worship and other activities of the Church to promote spiritual growth, social justice, self reliance and moral re-generation.

14 The Membership of the Synod as per Section 3 of Chapter IV shall be as follows :-

- (1) All Bishops of the Church, whether diocesan or Assistant and office bearers of the Synod shall be ex-officio members of Synod.
- (2) Bishops without diocese may be members of the Synod under whose frame by the Synod.
- (3) Superannuated bishops shall be members of the Synod without vote.
- (4) Every diocese shall be represented on the basis of it's communal membership according to the prescribed schedule.
- (5) President and Secretaries of all standing committees and commissions appointed by Synod.
- (6) President and Secretaries of Synodical board and commissions
- (7) President and Secretaries of Synodical movement to Christian service.
- (8) President and Secretary of Synodical Youth fellowship, youth representatives below 18 years of age
- (9) Chief functionaries of Board of Trustees of CNI and any other mode of CNI, Synod.
- (10) Members of Church of North India, not exceeding 12 in number, co-opted as full members by the executive committee.

15 The Synod is recognized as the Supreme supervisory legislative and executive body and the final authority in all

matters pertaining to Church vests in the Synod which shall be exercised through its executive committee functioning between two meetings of Synod, so as to implement it's mission, policies, programmes and properties of the Church. As per Section 4, the Synod shall elect by ballot its Moderator and deputy Moderator on the recommendation of council of Bishop in each ordinary meeting of Synod amongst the diocesan bishops of Church of Norht India The said office bearers who are responsible for day to day functions, shall hold office from the close of that meeting, in which they are appointed until the close of the next ordinary meeting of the Synod in which their successors are elected. The office bearers of the Synod would also include the General Secretary and the Treasurer, who shall be either full time or honorary office bearer of the Synod. In case of a full time General Secretary or a treasurer, they shall be appointed by the Executive Committee and shall hold office for their term of appointment, their term of service shall be governed by terms of employment or any amendment thereto as approved by the Synod. However, in case of their appointment being honorary office bearers, they shall be elected in the ordinary meeting of the Synod by ballot for a period of three years.

Synod is empowered to set up synodical and other votes, commissions and appoint representatives on them according to the provisions of their approved Constitution. It shall also make arrangements, where necessary, for administration

of votes, serving more than one diocese and shall appoint the executive committee, standing committees, boards, commissions and trusts and all other committees and bodies has been constituted from time to time.

16 Some other important functions of the Synod which are set out in Section 4, read thus :-

Clause 10. It shall have power to set up commissions necessary for the work of the Church, approve their respective constitutions, and make appointments on them as required by their constitutions.

Clause 11. It shall, through its Executive Committee, appoint an Episcopal Electoral Body for electing a Bishop or an assistant Bishop for each Diocese in which an episcopal vacancy occurs. The Episcopal Electoral Body shall be appointed in accordance with the rules laid down in the Constitution of the Church of North India.

Clause 12. It shall act as a liaison between various Missionary Societies and the Church of North India for all matters of policy, personnel, property and finance, having due regard to any special relation that may have existed between a Diocese and the Missionary Society concerned.

Clause 13. It shall make rules and determine procedures for carrying on the work of the Missionary Societies related to the Church and shall have power to take any action necessary in this regard.

Clause 14 a) It shall arrange for the election, appointment, transfer, discipline, suspension, termination of services and retirement of Bishops and Assistant Bishops of the Church of North India.

b) It shall arrange for the appointments, discipline, suspension, termination and retirement of the General Secretary, the Treasurer, the Chief Functionaries and any other functionaries of the Boards, Commission of the Synod.

Clause 15) It shall be final authority in all matters pertaining to the financial administration of the Church of North India.

17 Apart from this, by virtue of Clause 18, the Synod has the power to render financial assistance to it's diocese, synodical votes, trusts, commissions, committees and other related bodies. By clause 21, the Synod shall receive through it's treasurer, the annual budgets and audited statement of accounts of the diocesan council and it shall lay down policies and provide guidelines to the diocese for their financial management. Clause 23 make the arrangement for salaries of the Bishops and other employees in the following terms :-

Clause 23 :- It shall arrange for the salaries of Diocesan Bishops and Assistant Bishops, and other employees appointed by the Synod of the Church of North India, their Provident Funds, Superannuation Fund and Gratuity Scheme and/or any other emoluments or expenses, which go with their respective office.

The diocese is one unit of territorial organization of the Church of North India and the list of diocese is found to be appended as

Schedule-1 and the Executive Committee of the Synod has the power to make changes in the said list as and when required, following the action by the Synod as prescribed in the Constitution. Each diocese council as power either to adopt Chapter 2 of Part-2 of the Constitution, and to make rules thereunder or to prepare it's own constitution for the pastorate by making such adaptions in the provisions of the Chapter, as may be necessary. However, such a Constitution shall come into force only after approval by the Synod or it's executive committee.

18 Pastorate is recognized in Section 1 of para-2 as an organized congregation or a group of congregations, recognized by Pastorate by the diocesan council under the Pastoral Care of the Presbyters-in-charge.

On careful reading of the entire constitution comprising of various chapters and parts, the structural hierarchy of the Church of North India can be summarized as under :-

**CHURCH OF NORTH INDIA
SYNOD**

(Chapter VI. Section I, pg.96)

EXECUTIVE COMMITTEE

(chapter IV, Section IX, clause 1, pg. 116)

OFFICE BEARERS

1 Moderator

2 Deputy Moderator

3 General Secretary

4 Treasure

(Chapter IV Section VI. pg.107)

BISHOP

(Chapter III Section VII pg.69)

DIOCESAN COUNCIL

(Chapter III, Section III, pg.63)

EXECUTIVE COMMITTEE

(Chapter III, section XI, pg.81)

Office Bearers

1. President i.e the Bishop
2. Assistant Bishops
3. Vice President
4. Secretary and
- 5 . Treasure

(chapter III, Section VI, pg.68)”

19 The plaintiff no.1 who is bishop of diocese of Bombay and Church of North India came to be elected on 9/6/2006 and he recognizes the supremacy of the Synod, which is the legislative and executive body of the Church and the final authority in all matters relating to Church. From the hierarchy noted above, it is not in dispute that the Synod functions through its executive committees which is responsible for, to fulfill its aims, objects and policies. The executive committee meets twice a year and transacts business on behalf of the Synod between its two ordinary meetings.

The Executive Committee consists of the following members :-

- i) **Ex. Officio Members:** The Office Bearers of the Synod namely (a) Moderator, (b) The Deputy Moderator, (c) General Secretary, (d) The Treasurer, shall be the Ex. Officio Members of the Executive Committee. The Moderator and Deputy Moderator are not eligible to contest the election for the second time.
- ii) **Elected Members:** One member from each Diocese to be elected by the Synod in such a manner that out of these elected members five shall be Bishops, seven Presbyters and the rest members of the laity of whom at least three shall be women. The number of lay representatives of the Executive Committee shall not be less than 51 per cent of the total membership of the Executive Committee.

20 The case of the plaintiffs is that all the Synods are headed by the Moderator and Deputy Moderator who are elected by the Ballot by the Synod on recommendation of the council of bishops from amongst the 27 diocesan bishops of the CNI, whose age shall be less than 62 years at the time of the election, during each ordinary meeting of the Synod. The Synod shall hold office from the close of that meeting in which they are appointed until close of the next ordinary meeting of the Synod in which they successors are elected and the Moderator and Dy. Moderator are not eligible for re-election for a second term. According to the plaintiff, an ordinary meeting of Synod of defendant no.5 shall be held once every three years and in such ordinary meeting, all important issues with respect to the defendant no.5 and all the diocese are discussed and decided upon, including that of

financial committee, reports of the committee, general secretary and reports of the various committees of the defendant no.5.

In the ordinary meetings, fresh elections are held for electing new body of Synod, which further elects the new executive committee. As per the learned counsel Mr.Khandeparkar, it is mandatory to hold the ordinary meeting every three years to govern the defendant no.5 democratically as per the Constitution of CNI, and in no circumstances, the ordinary meeting can be postponed beyond period of one year as stipulated in the Constitution. Further, as per clause 6 of Chapter IV, Section (viii) of the Constitution, the notice of any ordinary meeting of Synod shall be send to all members atleast 45 days prior to opening of the date of the meeting and tentative agenda has to be sent atleast 15 days prior to the date of the meeting. The meeting contemplate a coram of 1/3rd of the total voting membership of the Synod of who not less than one third present shall be lay persons and not less than one third, shall be the Ministers.

21 The case of plaintiff as pleaded in the plaint is that the defendant no.1 became the Moderator of the Synod of defendant no.5 on 3/10/2017 and on expiry of period of three years, he ceased to act as a Moderator with effect from 3/10/2020. However, since the executive committee could not hold the election, the time to conduct the meeting was extended by one year i.e. 3.10.2021, but since the executive committee has not

organized the ordinary meeting by 31/10/2021, the powers of defendant no.1 as a Moderator automatically came to an end on the said date and from 4/10/2021, and the defendant no.1 could not have acted as a Moderator of Synod of defendant no.5 and similarly, defendant no.2, Deputy Moderator also ceased to exercise his power after 3/10/2021 and to take any decision as Deputy Moderator on behalf of defendant no.5. As a result of this aforesaid development, the defendant no.3, Under Secretary and defendant no.4 treasurer had ceased to enjoy any power to take any administrative decision or handle any day-to-day affairs and working of their respective office. The plaintiff no.1 claimed that it decided to hold AGM of the Bombay diocese on 25/9/2021 but due to unavoidable circumstances of Co-Parsolate was required to postpone the said meeting.

22 In the mean time, the office bearers of the CNI, Synod held a meeting on 22/10/2021 and appointed Mr.Suresh Jacob, Members, Executive Committee, CNI, Synod and Mr.Joshua Ratna. Chief Functionary and Secretary as the observers to the Annual General body meeting of the Bombay diocesan council to be held on 25/9/2021 and Mr.Jacob was requested to communicate with the plaintiff no.1 Bishop of diocese for further details. The observers demanded certain documents from the plaintiff no.1 which included the agenda of AGM as well as bye-laws of the Bombay diocesan council as approved by synod of Executive Committee. The Bombay

Diocesan Council was intimated that the observers would be attending the meeting on 25/9/2021. However, the meeting scheduled on 25/9/2021 came to be postponed till further orders, since the local authorities had asked the diocesan to strictly limit the gathering of the 50% of the capacity, but by that time, two observers had already reached Mumbai.

The General Secretary Rev. S.Denis Lall presented his report dated 30/9/2021 and the observers reported of the various incidents chronologically and in the following manner :-

“4. Many members from Diocese of Bombay came to meet both the Observers and complained against the malfunctioning in the Diocese”.

23 On the basis of the aforesaid report, the CNI, Synod observers, proposed an investigation to bring normalcy in the diocese. The General Secretary Rev. Denis Loll also received an e-mail from Rev. Rajendra Bhosale, Diocesan Secretary, Bombay Diocesan Council where he raised serious objections and made derogatory remarks against the appointment, credentials and actions of the observers of CNI, Synod and the decision of CNI, Synod office bearers.

In the wake of the aforesaid background, the decision was taken and communicated to the plaintiff no.1, in respect of conduct of inquiry into the affairs, particularly, when the issues pertain to the leadership of the diocesan bishop and the

appointment of the diocesan executive committee unconstitutionally. Pending the said inquiry, an Adhoc Committee came to be appointed as per the provisions of CNI Constitution for a period of six months. Further, the plaintiff no.1 Rev. Prakash D. Patole has been directed to proceed on leave of absence till pendency of Inquiry Committee and decision of the Executive Committee.

24 In support of the decision impugned, the learned Senior Counsel Mr.Kadam has submitted that the impugned order passed in the Notice of Motion is perfectly within four corners of law, while determining the grant of temporary injunction in a Suit filed under Section 34 and 36 of the Specific Relief Act. He would submit that no prejudice is caused to the plaintiff since contemplating an inquiry into the allegations levelled against plaintiff no.1, he has been asked to proceed on leave and in any case, the relationship between defendant no.5 and plaintiff no.1 is purely a private contract of service and the bishops are contractually obligated to abide by the Constitution and the bye-laws of the Church of North India. The learned Senior counsel would submit that the plaintiff no.1 was appointed as a bishop of the Bombay diocese of CNI in 2006 and his salary and scale of pay are determined by the CNI and he is paid remuneration out of its funds. In any case, the submission is no injunction can be granted for enforcement of a private contract of service under the Specific Relief Act and there cannot

be any direction for reinstatement of service, even if the disciplinary action is found to be illegal. What can at the most claim is a relief of damages.

In any case, the learned Senior counsel has instructions to make a statement that if at all the plaintiff no.1 is objecting to the Constitution of the Inquiry Committee by apprehending bias, he has instructions to make a statement that the Inquiry Committee would be re-constituted since it is the submission of Mr.Khandeparkar that Mr.Jacob was one of the observer on whose report the impugned communication is issued.

Mr.Kadam makes a categorical statement that Mr.Suresh Jacob, Member of the Executive Committee, CNI, Synod shall be substituted by another convener.

25 On hearing the rival contentions of the parties and on perusal of the impugned order, it can be *prima facie* seen that the bishop is the salaried employee of the Synod as clause no.23 of Section 4 of the Constitution provide that the Synod shall arrange for the salaries of diocesan Bishops and Assistant Bishops as well as for their provident funds, superannuation funds and gratuity scheme or any other emoluments or expenses which go with their respective office. Since the bishop is an employee, it is always open to subject him to an inquiry, by following procedure prescribed by rules governing his service conditions.

The impugned order in effect, does two things; it dissolve the executive committee of the Bombay Diocesan Council and it places the bishop under compulsory leave of absence and the said decision is opposed on the ground that the term of the office bearers have expired on 3/10/2021 and therefore, they were not empowered to appoint the observers or take any impugned decision, since the term had already expired on 3/10/2021, after extension of one year, in 2020, and therefore, the decision taken in the capacity of office bearers is unjustified and cannot be sustained in law. Another objection, being to the effect that the office bearers cannot suspend the bishops.

26 While all these objections are raised in the plaint, are being subject matter of the suit, subject to the evidence being brought on record to that effect by the plaintiffs, at the stage of Notice of Motion, i.e. grant of temporary injunction, the undisputed fact which emerges apparently, is that the Synod is the Apex body of Church of North India and it is also an admitted fact that the executive committee of the Synod of defendant no.5 did not held its ordinary meeting till 22/10/2021 and since the Constitution contemplate that the office bearers shall continue to hold the office till the next date of ordinary meeting, and therefore, the term of the defendant nos.1 and 2 did not come to an end before 22/10/2021. In any case, since the burden lies upon the plaintiffs to make good the pleadings. Recording that no hardship is caused to the plaintiff no.1 who has been placed on

compulsory leave and since all his entitlements are kept in tact, though inadvertently, the learned Judge has assumed that even the plaintiff no.2 has been placed under compulsory leave which is not incorrect since the plaintiff no.2 is the Secretary of Diocese of Bombay, with the only modification in the impugned order, which do not warrant any interference and by upholding the same, the appeal is dismissed.

In view of the dismissal of the AO, Interim Application No.600/2022 do not survive and is disposed off.

At this stage, learned counsel for the appellant seek extension of the ad-interim relief.

I am not inclined to grant the said relief, since on merits it is recorded that no prejudice is caused to the plaintiff/appellant no.1 since it has been held that he is employed and it is the discretion of the employee to take any action against him, including proceedings for inquiry.

(SMT.BHARATI DANGRE,J)