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A Nos.3661 & 3663 of 2022

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in

C.S.No.86 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

These two applications are presented by the plaintiffs to suspend the third defendant from acting as the Moderator of the Church of South India(the CSI) and to appoint an interim administrator to take over and manage the affairs of the CSI.

2. Oral submissions on behalf of the applicant were addressed by Mr.Vineet Subramani, learned counsel; and on behalf of the respondents by Mr.V. Prakash, learned senior counsel.

3. Mr.Vineet Subramani submitted that the third respondent/Moderator is the head of the institution. As the Bishop of the South Kerala Diocese, he was functioning as the Chairman of the Dr.Somervel Memorial CSI Medical College (the College), Karakkonam, Kerala. Complaints were lodged alleging that the College had collected money from parents of students for purposes of providing admission to the



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said institution. By relying upon Paragraph 7 and 12 of the order passed by the Kerala High Court in bail applications, at pages 103 and 108 of the typed set, learned counsel contended that the third respondent, who was the main accused, admitted receipt of amounts from the parents of the students concerned. Learned counsel also pointed out that the Enforcement Directorate(ED) subsequently provisionally attached a sum of Rs.95.25 lacs, which is said to represent amounts unlawfully collected for the above purpose. He also referred to the order passed by this Court while granting leave, particularly paragraphs 12 to 16 thereof, wherein this Court concluded that the plaintiffs were entitled to leave under Section 92 of CPC.

4. Mr.V.Prakash refuted the above contentions. He pointed out that the third respondent was elected pursuant to elections conducted in January 2020 for a three year term. The said three year term ends on or about 12.01.2023 and elections are scheduled to be held shortly thereafter. As Bishop of the South Kerala Diocese, he submitted that the third respondent functioned as the Chairman of the relevant college. Since monies were



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collected from the parents of students purportedly on behalf of the College, he stated that the third respondent accepted moral responsibility and initiated action to return the money. In these circumstances, he submitted that the third respondent cannot be suspended prior to trial.

5. The next contention was that the Constitution of the CSI provides for an elaborate mechanism to deal with disputes of this nature under Chapter XI thereof. With particular reference to clauses 25 to 28 of Chapter XI, he submitted that the Constitution provides for charges to be brought against Bishops, including the Moderator. Without exhausting such internal mechanism, he contended that the applicants are not entitled to interim relief. By referring to the Memorandum and Articles of Association of the Church of South India Trust Association, which is a company limited by guarantee under Section 25 of the Companies Act 1956, he pointed out that the assets of the CSI are held by the Section 25 company and not by CSI. Therefore, he contended that an action should have been initiated under the relevant provisions of the Companies Act, such as those relating to oppression and mismanagement, and not by invoking Section 92 of CPC.



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The last submission was that the applicants approached the Court for the oblique purpose of diverting attention from the challenge to their elections by the CSI.

6. By way of rejoinder, learned counsel for the applicants submitted that the existence of the internal dispute mechanism does not oust the jurisdiction of this Court under Section 92 CPC. He further submitted that there is contradiction in the contention of the respondents inasmuch as the respondents submit, on the one hand, that no complaint was lodged, whereas it is stated, on the other, that an inquiry was conducted. By drawing reference to paragraphs 7 and 12 of the bail order, he reiterated that the third respondent admitted on affidavit that he had received money in relation to admission to the College. In response to the submission regarding the next election, he stated that no notice was received by the applicants. By pointing that an interim order in favour of the applicants is in force, he refuted the contention that the applicants did not approach the Court *bona fide*. Since a strong *prima facie* case is made out, learned counsel concluded by stating that interim protection should be granted in the interest of the Trust.



7. The sheet anchor of the applicants' case is the order passed by the Kerala High Court on 30.09.2020. The said order was passed in bail applications. At paragraph 7, the Court extracted a portion of the investigating officer's (IO) report dated 24.07.2020. Paragraph 10 of the said report, in relevant part, reads as under:

“10. The above accused have admitted in their statement that they have received the amount as alleged by the complainants in the cases....”

At paragraph 12 of the order, the Court recorded, in relevant part, as under:

“.... I perused the Crl.M.C. filed by the main accused in this case. In the Crl.M.C, it is very specifically admitted that, the amount is received from some of the parents in this case and they returned the amount to them.”

8. It should be recognized that the findings recorded in this order are clearly tentative findings for purposes of the bail application. As noticed above, paragraph 7 extracts portions of the report of the IO dated 24.07.2020. Therefore, on the basis of paragraph 10 of the said report, it cannot be concluded that the third respondent admitted that he received



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monies personally. As regards the finding recorded in paragraph 12 of the order, it leads to the conclusion that amounts were received from some of the parents of students but it cannot be concluded that such amounts were received by the third respondent. In any case, it is outside the jurisdiction of this Court to record definitive findings in a matter pending before the appropriate courts in Kerala.

9. Apart from the bail order, learned counsel for the applicants also placed on record and relied on a press release dated 22.11.2022. The said press release relates to the provisional attachment by the ED of a sum of Rs.95,25,000/- from the bank account of the College. Paragraph 3 of the press release states that investigation revealed that two persons, including the third respondent, had received a sum of Rs.95,25,000/- as proceeds of crime.

10. Based on the two documents discussed above, while no definitive conclusions may be drawn about the complicity of the third respondent in unlawful acts, at a minimum, it appears that the College headed by the third



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respondent unlawfully received money from parents in relation to medical admission, and the third respondent is being prosecuted as the main accused. Therefore, a *prima facie* case is made out in A.No.3661 of 2022. The balance of convenience and irreparable hardship remain to be considered.

11. In paragraph 7 of the counter of the respondents, it is stated that the third respondent was elected on 11.01.2020 and holds office for a period of three years. It is further stated that the next election is to be held in January 2023. The respondents further stated that the third respondent was the Chairman of the College but was not involved in the day-to-day affairs of the institution.

12. Several material factors should be taken into consideration and weighed in the balance before deciding whether the applicants are entitled to interim relief. The third respondent has functioned as Moderator from 11.01.2020, i.e. a period of almost three years, and is at the end of the term. The next election is scheduled to be held on or about 13.01.2023. While



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receipt of amounts from the parents of the students is admitted, the third respondent denies personally receiving the amounts and the investigation relating thereto is in progress. The bail order, on which much emphasis was placed, was issued on 30.09.2020, whereas this suit was presented in January 2022, leave was obtained in April 2022 and these applications were filed in August 2022. When all these factors are considered cumulatively, the balance of convenience is not in favour of the applicants. It also cannot be said that irreparable hardship would be caused to the applicants or to the Trust if the Moderator is allowed to function until the next election is held in January 2023.

13. Except as regards the third respondent, no allegations have been made against any of the other office bearers of the CSI. The Constitution of the CSI appears to provide for multiple office bearers and contains a detailed mechanism for governing the Church and its activities. Therefore, no case is made out, at this juncture, to appoint an interim administrator to take over and manage the affairs of the Church.



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14. Before concluding, however, it is clarified that the applicants are granted leave to re-apply, including for the interim relief prayed for in A.No.3661 of 2022, if there are material changes in circumstances, including but not limited to re-election of the third respondent. These two applications are disposed of on these terms.

14.12.2022

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Note: Issue order copy on 15.12.2022



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