



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.20641 of 2022

and

W.M.P(MD)No.16013 of 2022

and

W.M.P(MD)No.15765 of 2022

WEB COPY

J.Magesh Santhakumar

..Petitioner

Vs

1.The Secretary to Government,
Department of School Education,
Chennai.

2.The Director of School Education,
17, College Road, Subba Road,
Avenue, Nungambakkam,
Chennai.

3.The Director of Elementary Education,
Directorate of Elementary Education,
DPI Complex College Road,
Chennai-600 006.

4.The Administrator,
Indian Evangelical Lutheran Church (IELC),
No.47, Eldams Road,
Teynampet,
Chennai-600 018.

5.The Indian Evangelical Lutheran Church (IELC),
Nagercoil Synod Office,
Lutheran Mission Compound,
KP Road, Nagercoil,
Kanniyakumari District.

6.R.Binoba
(impleaded as 6th respondent as per the
order of this Court, dated 26.09.2022) ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents in any way allowing the Government Servants to participate in the election to the post of Office Bearers of the 5th respondent Indian Evangelical Lutheran Church



(IELC) which is violative under 14-A of the Tamil Nadu Government Servants Conduct Rules, 1973 and based on the representation of the petitioner, dated 01.08.2022.

For Petitioner: Mr. S. Ramsundarvijayraj

For R1 to R3 : Mr. Om. Prakash
Government Advocate

For R4 & R5 : Mr. M. Ajmal Khan
Senior Counsel
for M/s. Ajmal Associates.

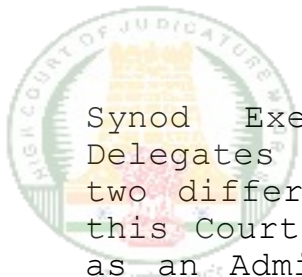
For R6 : Mr. Isaac Mohanlal
Senior Counsel
for M/s. Isaac Chambers

ORDER

Heard the learned counsel appearing for the petitioner, Mr. Om. Prakash, learned Government Advocate appearing for the respondents 1 to 3, Mr. M. Ajmal Khan, learned Senior Counsel appearing for the respondents 4 & 5, Mr. Isaac Mohanlal, learned Senior Counsel appearing for the 6th respondent.

2. The writ petitioner, namely, Magesh Santhakumar filed a writ petition seeking a writ of mandamus forbearing the respondents in any way allowing the Government Servants to participate in the election to the post of Office Bearers of the 5th respondent/Indian Evangelical Lutheran Church (IELC) which is violative under Section 14-A of the Tamil Nadu Government Servants Conduct Rules, 1973 and based on the representation of the petitioner, dated 01.08.2022. Now, the petitioner in W.M.P(MD)No.15764 of 2022 wants to implead him as a necessary party in the said writ petition. The said impleading petition in W.M.P(MD)No.15764 of 2022 is allowed and the petitioner is permitted to implead him as 6th respondent in the main writ petition.

3. The learned counsel appearing for the writ petitioner would submit that the petitioner is a Christian, follower of the Indian Evangelical Lutheran Church (IELC) and also a member of the Ammachi Kovil Messiya Lutheran Church of South Valliyoor Church. The Indian Evangelical Lutheran Church IELD is a Protestant Christian Denomination Indian. It has three Synod namely Ambur, Nagercoil and Trivandram Synod and the same was registered under the Society Registration Act, 1860. The Nagercoil Synod consist of five circles, namely Colachal Circle, Madurai Circle, Nagercoil Circle, Thoivalai Circle and Tirunelveli Circle. He would further submit that the Administration of the Synod, there will be election to the IELC office bearers and the tenure to the post of Office bearers is for three years. The post of Synod includes Circle Office Bearers,

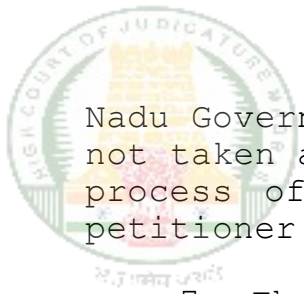


Synod Executive Committee Members, Church Council, Delegates to IELC Convention and IELC TA Members. Since there is two different factions in two groups in the Administrator (IELC) this Court appointed High Court Justice D.Hariparanthaman (Retd.,) as an Administrator and to conduct elections to appoint the new Office Bearers of the IELC. As per the Notification of the fourth respondent, dated 31.05.2022 in ROC-IELC-ELECTION-2/2022, the election was notified, now the election of the circle of Nagercoil Circle was completed and the Office Bearers were elected to the various posts of the IELC. He would further submit that by the election Notification No.3, dated 22.08.2022, in ROC-IELC-ELECTION-3/2022, the Nagercoil Synod to elect the Synod Office Bearers is to be held on 17.09.2022 and the 4th respondent has approved the candidates of the Office Bearers.

4. The learned counsel for the petitioner submits that to the shock and surprise, the fourth respondent has approved the candidates for the post of Synod Treasurers, who are R.Binoba and R.Merwin are Synod Treasurers and Vinothkumar as a Synod Joint Secretary. The post of the Synod Treasurers are nominated R.Binoba and R.Merwin are a Government Staff working in the Government aided school at Concordia Vaddakkankulam school and Mr.R.Binoba is working as a Teacher in Concordia Higher Secondary School at Pooteti and the Vinothkumar, who is working as a Principal in the Panchayat Government School in Elapar, Eddki District of Kerala State is contesting for the post of Nagercoil Synod Joint Secretary. The persons, who have been nominated, are getting salary from the Government and they have been acting and involving in religious politics, which are prohibited under the Disciplinary Rules of the Government Servant.

5. As per the statement made by the petitioner that the other teachers, namely, R.Binoba and R.Merwin are Government staffs working in the Government aided school at Concordia, Vaddakkankulam and Pooteti, but the petitioner has made an averments that the Vinothkumar is working as a Principal in the Panchayat Government School in Elapar, Eddiki District of Kerala State and that has not been substantiated through any document to show that the said persons are working as a Government servants and no rules and regulations have been produced to show that the Government aided school teachers in Kerala State is prohibited from contesting any such elections. Hence, this averment cannot be taken into consideration by this Court.

6. He Would further submit that as per Rule 14-A of the Tamil Nadu Government Servants Conduct Rules, 1973 the Government Servants are prohibited from participating any of the religious, communal and political organizations. Rule 23 of the Tamil Nadu Government Servants Conduct Rules, 1973, restrict the Government Servants to engage in anti-secular activities. Now the process of IELC election of Office Bearers is against the Tamil



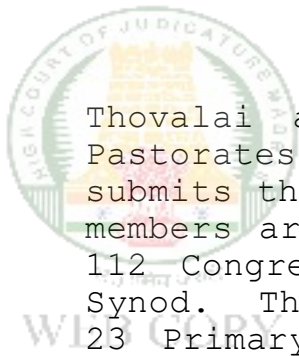
Nadu Government Servants Conduct Rules, 1973. The respondent 7e not taken any steps to restrain Government Servants in the election process of Indian Evangelical Lutheran Church IELC. Hence, the petitioner filed the writ petition for the above said relief.

7. The learned counsel appearing for the newly impleaded 6th respondent would submit that since there is two different factions in two groups in the Administrator (IELC), this Court appointed retired High Court Judge Mr. Justice D. Hariparanthaman, as an Administrator for conducting elections to appoint the new Office Bearers of the (IELC) includes circle level Office Bearers and (IELC) Synod Office Bearers.

8. As per the Constitution and Bye-laws of IELC, elections will be conducted in 4 tiers viz., (i) election at Congregation, (ii) election to Circle, (iii) election to Synod and (iv) election to Office Bearers of IELC. The election for the 1st tier at Congregation level will be conducted for electing Church Committee members viz., President, Secretary, Treasurer and members. The eligible communicant members of the Church will vote and elect the above Office bearers.

9. The learned counsel for the 6th respondent would submit that as per Rule 14-A of the Tamil Government Servants Conduct Rules, 1973, upon which the writ petitioner is placing reliance is not imposing any such restriction upon the Government Servants from participating in Church Election. Further, the very same issue is already settled by the Hon'ble Division Bench of this Court, dated 29.10.2021 in W.P(MD)No.10132 of 2015 etc., batch. Hence, the prayer in the writ petition is purely on misconception of the Rules and the same is liable to be dismissed.

10. The 6th respondent belong to Zion Lutheran Church, Enayam Pastorate, Enayam, Kanyakumari District which comes under the Nagercoil Synod of Indian Evangelical Lutheran Church (IELC). It is one among the 112 Churches of the Nagercoil Synod and he is one of the Communicant member of the Church and he have powers to vote and to contest in the Congregation Elections to elect and to be elected as the Office Bearers at any level in IELC Diocese. The 6th respondent presently working as B.T. Assistant (Tamil) in Concordia Higher Secondary School, Pootteti, Kanyakumari District, which is a recognized aided Minority Educational Institution, administered by the 5th and 6th respondents. The Indian Evangelical Lutheran Church IELC is a registered Society bearing registration S.No.11 of 1959, dated 09.02.1959 under District Registrar, Chinglepet, Madras. The Society enjoys the status of religious Minority as per Article 30 of the Constitution of India. The Society is governed by its own Constitution and Bye-laws. The IELC is a Constituent of 3 Synods viz., Ambur Synod, Nagercoil Synod and Trivandrum Synod. Each Synod consists of 5 Circles. The Nagercoil Synod consists of the circles namely, Colachel, Nagercoil, Madurai,

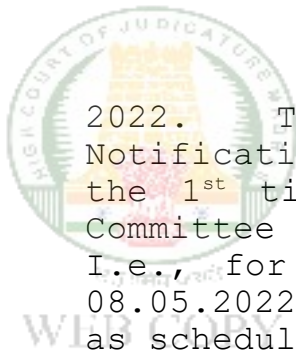


Thovalai and Tirunelveli. Each Circle is the consti of Pastorates, which is a group of Congregations/Churches. He further submits that the Gospel Centers which has more than 30 communicant members are called as Congregations. There are 73 Pastorates and 112 Congregations/Churches under the Administration of Nagercoil Synod. There are 80 Schools and 3 Hospitals under IELC, of which, 23 Primary Schools, 3 Middle Schools, 1 High School, 3 Higher Secondary Schools, 1 Theological Seminary, etc., were under the administration of Nagercoil Synod.

11. As per the Constitution and Bye-laws of IELC, elections will be conducted in 4 tires viz., (i) election at Congregation, (ii) election to Circle, (iii) election to Synod and (iv) election to Office Bearers of IELC. The election for the 1st tier at Congregation level will be conducted for electing Church Committee members viz., President, Secretary, Treasurer and members. The eligible communicant members of the Church will vote and elect the above Office bearers.

12. In the 2nd tire of election at Circle level, the office bearers viz., President, Vice President, Secretary-cum-Treasurer, Joint Secretary, IELC Church Council member, Trust Association members, Synod Executive members, IELD convention delegates will be elected. In that election, the Lay delegates from each Congregation are elected in the ratio of 1:30 and not more than 3 delegates from each congregation with a minimum of 1 woman lay delegate. In the 3rd tire of election at Synod Level, the office bearers viz., President, Vice President, Secretary, Joint Secretary, Treasurer for the Synods will be elected. Similar to the 2nd tire, the Lay delegates from each congregation are elected in the ratio of 1:30 and not more than 3 delegates from each congregation with minimum of 1 woman Lay delegate. Finally, the 4th tire of election will be conducted for electing IELC office bearers viz., President, Vice President, General Treasurer-cum-Secretary etc., where the IELC convention delegates who all are elected in the 2nd tire of election only will cast their votes. The triennium of the Office bearers of the Synod and the IELC is for 3 years whereas, the triennium of the Office bearers of the Congregation and the Circle are for 2 years. There are several disputes arose regarding the administration of IELC which leads to multiplicity of Civil Suits. Later, when the matters reached the Principal Seat of this Court in Tr.C.S.No.741/2017, by order, dated 31.07.2018 this Court appointed the Hon'ble Justice Mr.D.Hariparanthaman (Retd.,) as an Interim Administrator for IELC to administrate the Society in all aspects till the next office bearers gets elected. The Hon'ble Administrator takes appropriate steps to amend the Constitution and Bye-laws of the society. In view of the direction given by the Hon'ble Supreme Court in SLP © No.18100 of 2022, the same has been registered before the Registrar of Societies Central, Chennai on 10.02.2022 and the same has been

<https://www.court.gov.in/> by the this Court, dated 30.03.2022 in O.S.A.No.70 of



2022. Thereafter, the Hon'ble Administrator issued Notification-1 vide ROC-IELC-ELECTION-1/2022, dated 28.03.2022 for the 1st tire of election for the office bearers and the Church Committee Members of the Congregation/Churches in whole of the IELC I.e., for all the 3 Synods and the elections are scheduled on 08.05.2022. It is pertinent to submit that the election was held as scheduled and the results were also announced on the same day.

13. Thereafter, the Hon'ble Administrator issued second Election Notification vide ROC-IELC-ELECTION-2/2022, dated 31.05.2022 for the 2nd tire of election for various posts at the Circle level and the same was scheduled on 06.08.2022, 09.08.2022, 19.08.2022 for Nagercoil Synod, Trivandrum Synod and Ambur Synod respectively. It is humbly submitted that the election was held as scheduled and the results were also announced on the same day. After that the Hon'ble Administrator issued third Election Notification vide ROC-IELC-ELECTION -2/2022, dated 31.05.2022 for the 3rd tier of election for the Office bearers at Synod level and the same was scheduled on 03.09.2022, 10.09.2022 and 17.09.2022 for Ambur Synod, Trivandrum Synod and Nagercoil Synod respectively. While this being so, the writ petitioner filed the present writ petition with a vexatious prayer not to permit the Government Servants to participate in the IELC election. Despite, mentioning the 6th respondent in the affidavit, for the reasons best known, the petitioner has not made the 6th respondent as a party in the writ petition, obtained an order of interim stay, dated 01.09.2022. Aggrieved against the interim order, the Administrator filed vacate stay petition in W.M.P(MD)No.16013 of 2022 and the 6th respondent filed another vacate stay petition in W.M.P(MD)No.15765 of 2022. Both the applications are taken up for hearing and disposed of by this order.

14. The learned counsel appearing for the 6th respondent would submit that the contention of the writ petitioner is that the Institutions under the Diocese are all Minority Educational Institutions and protected under Article 30 of the Constitution of India, but the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules framed thereunder as referred by the petitioner itself is not applicable to the facts of the petitioner's case. Likewise, the Tamil Nadu Government Servant Conduct Rules is also not applicable insofar as the teaching and non-teaching staffs serving in the Private Schools are concerned. The petitioner had obtained an interim order behind their back and suppressing the said rules.

15. The learned counsel for the 6th respondent would further submit that the very similar issue already came up for consideration before this Court by way of Public Interest Litigation in W.P(MD)Nos.10132 of 2015 and the same came to be dismissed by order dated 29.10.2021 in the following terms:-

<https://www.mhc.tn.gov.in/judis>5. It is the case of the petitioners that



the Diocese is running a number of Educational Institutions aided by the Government and Teaching and non-Teaching staffs of such aided schools, who are paid from Government fund are contesting in election for holding the posts in religious institutions, which is contrary to Rule 14-A of the Tamil Nadu Government Servants Conduct Rules, 1973.

6. as per Rule 14-A of the Tamil Nadu Government Servants Conduct Rules, 1964, the Government Servants are prohibited from being a member of, or be otherwise associated with any organization which promotes or attempts to promote disharmony or feelings of enmity or hatred or ill-will between different religious, racial, language or regional groups or castes or communities on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever. As regards participation in purely religious activities, the freedom to profess and practice any religion is guaranteed under Article 25 of the Constitution of India. The Government servants while they are free to profess and practice any religion in their private lives, should conduct themselves in public as to leave no room for any impression to arise that they do not subscribe to the secular philosophy of the State. The Church of South India Diocese is having its own rules, regulations or by-laws to govern the affairs and conduct of the teaching and non-teaching staffs employed in the Schools which are functioning under the Diocese. Rule 16(1) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, prescribes the code of conduct for Teachers and non-teaching staffs employed in private schools. As per Rule 8 of the said Rules, no teacher or other person employed in a private school shall contest or participate in or canvass for any elections. Such restriction will not, however, apply to the teachers in respect of elections to the Teachers-Constituencies.

7. The second respondent, namely, the Secretary, the School Education Department filed a counter-affidavit, wherein, he has specifically stated that in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules made thereunder, there is no provision dealing with the issue of the teaching and non-teaching staff contesting in an election and holding the posts in the third and fourth respondents organization. In these circumstances, the second

respondent submitted that the contention of the



petitioner to take action to forbear the staffs of 1
third and fourth respondents Educational Institutions
from contesting in election and holding the posts in the
third and fourth respondents religious organization and
to take appropriate action on the staff holding such
posts based on the petitioners representation is not
permissible for the reason that there is no such
provision available in the Tamil Nadu Recognized Private
Schools (Regulation) Act, 1973 and Rules made thereunder
enabling the Educational Authority to issue such
direction.

8. In view of the specific stand taken by the
Secretary, the School Education Department to the effect
that there is no provision under the Tamil Nadu
Recognized Private Schools (Regulation) Act, 1973,
against the teaching and non-teaching staffs, the
prayers sought for in the Writ Petitions are liable to
be rejected. Accordingly, the Writ Petitions are devoid
of merits and the same are dismissed. No costs.
Consequently, connected miscellaneous petitions are
closed.

16. Even assuming those provisions under the Tamil Nadu
Recognized Private Schools (Regulation) Act and Rules and the Tamil
Nadu Government Servants Conduct Rules are applicable, the said
Rules does not put any embargo against any employees of either
private schools or the Government Employees from taking part in any
Church election or taken part in any religious organization which
does not cause any disharmony or feelings of enmity, hatred or ill-
will.

17. The Rule 14-A of the Tamil Nadu Government Servants
Conduct Rules, 1964 only prohibits the Government Servant from
becoming a member of any association or organization which promotes
disharmony or feelings of enmity, hatred or ill between different
religious, racial, language, caste community or regional group.
Likewise, Rule 23 of the Tamil Nadu Government Servants Conduct
Rules, 1973, which only restricts the Government Servants to engage
or participate in any activities which are anti-secular or which is
prejudicial to the interest of the sovereignty and integrity of
India.

18. He would further submit that our Church doesn't engage in
any activities which are anti secular and prejudicial to the
sovereignty and integrity of the Nation. Hence, there is no legal
bar for the 6th respondent from becoming a member or contesting in
the election of the Church of Diocese. Accordingly, all these
years many Government Staffs of teaching and non-teaching have took
part in the diocese election for various posts in IELC. Till now,



not even a single allegations are made against the Government Staffs' involvement in the administration of IELC.

19. He would further submit that the rights to form association, right to practice and propagate religion and to manage religious affairs are the fundamental rights guaranteed under the Constitution of India. Becoming a member of the Congregation and taking part in the administration for achieving its objects is well within such rights guaranteed under the Constitution of India.

20. The reliance placed upon the proceedings of the Chief Educational Officer in Na.Ka.No.1685/E4/2020 dated 06.06.2022 will not applicable to the case on hand. First of all, the said proceeding directs the Government Officials to strictly follow Rule 14-A and 23 of the Tamil Nadu Government Servants Conduct Rules and Rule 16 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The 6th respondent participation in Diocese election will no way affect or support any of his service conditions.

21. In support of the contention, the learned counsel for the writ petitioner referred to Rule 16(1) of the Tamil Nadu Recognised Private Schools (Regulations) Rules 1974 and submitted that as per the rule the Teachers and other persons employed in private school shall be governed by the code of conduct as specified in Annexure II.

As per Annexure II

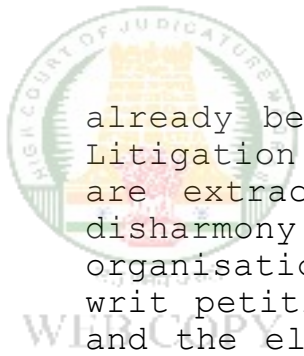
"7. No Teacher or other person employed in a private school shall engage himself in any political activity. He shall not be associated with any political party or any organisation which takes part in politics or shall subscribe to or assist in any other manner any political movements.

8. No Teacher or other person employed in private school shall contest or participate in or canvass for any elections. Such restriction will not, however, apply to the Teachers in respect of elections to the Teacher's constituencies."

9. No Teacher or other person employed in a Private school shall bring or attempt to bring any political or outside pressure on his superior authority in respect of his individual service interests.

22. It is to be seen in the above provision that any teacher or other person employed in a private school not to be associated with political party or contest or participate in election but no mention about religious elections. The fundamental right under the Constitution permits an individual to follow his (freedom of religious rights) religion and its activities.

<https://www.mhc.tridiv.in/judt> is seen from the records that the similar issue has



already been considered by this Court by way of Public Litigation in W.P(MD)Nos.10132 of 2015 and the relevant portions are extracted as above. The 6th respondent will not create any disharmony and he is not associated with any political party or any organisation which takes part in politics. The petitioner in the writ petition has not made out any case for stalling the election and the election process is going on. As per the orders of this Court, dated 31.07.2018, the Hon'ble Justice Mr.D.Hariparanthaman (Retd.,) as an Interim Administrator for IELC decided to conduct 4 tiers elections on various dates and the election process is going on and due to the interim stay granted by this Court, the Administrator could not proceed further and hs has filed a petition in W.M.P(MD)No.16013 of 2022 to vacate the interim stay granted by this Court in W.M.P(MD)No.14970 of 2022 in W.P(MD)No.20641 of 2022.

24. Therefore, considering the facts and circumstances of the case and also considering the submission made by the learned Senior counsel appearing for the newly impleaded 6th respondent, learned Senior Counsel appearing for the Administrator and the respondents 4 & 5, considering the order of the Hon'ble Supreme Court of India in SLP(c) Nos.18100/2021, dated 16.09.2021, the order passed by this Court in W.P(MD)No.10132 of 2015, dated 29.10.2021 and also considering the Rule 14-A of the Tamil Nadu Government Servants Conduct Rules, 1964, this Court is inclined to vacate the interim order granted by this Court in W.M.P(MD)No.14970 of 2022 in W.P(MD)No.20641 of 2022, dated 01.09.2022 by allowing the petitions in W.M.P(MD)No.15765 of 2022 and W.M.P(MD)No.16013 of 2022. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/11/2022

Sub Assistant Registrar(CS)

am

To

- 1.The Secretary to Government,
Department of School Education,
Chennai.
- 2.The Director of School Education,
17, College Road, Subba Road,
Avenue, Nungambakkam,

<https://www.mhcn.in/>



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Kanniyakumari District.

+1 CC to M/s.SPL.GP (SR-47207[F] dated 27/09/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-47170[F] dated
27/09/2022)

W.P(MD)No.20641 of 2022

and

W.M.P(MD)No.16013 of 2022

and

W.M.P(MD)No.15765 of 2022

26.09.2022

AMS(31.10.2022) 11P 8C