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W.P.No.13196 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.13196 of 2023
and
W.M.P.No.12941 of 2023

N.Benjamin Franklin

.. Petitioner

VS

1.The Inspector General of Registration
No.100, Santhome High Road,
Chennai – 600 028.

2.The Registrar of Societies,
Office of Societies of Registration,
182, Barathi Salai,
Royapetah, Chennai – 600 014.

3.IELC
Calvary Lutheran Church Compound,
321, KP Road, Nagercovil – 629 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to the order of 1st respondent KA.No.44881/I1/2022 dated 15.03.2023 relating to IELC Society and quash the same as arbitrary and illegal and devoid of merits, and all acts done in furtherance thereof.

For Petitioner : Ms.R.Perm Rajakumari

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader
for R1, R2
Mr.K.Venkateswaran, for R3

ORDER

The petitioner claims to be a member of the India Evangelical Lutheran Church(IELC). Though the respondents have denied the membership of the petitioner, it is unnecessary for this Court to look into



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this aspect of this matter now, in light of the ultimate decision arrived at.

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2. The challenge in this writ petition is to an order passed by R1 / Inspector General of Registration on 15.03.2023. In that order, which has been passed by the appellate authority, the order passed by R2 on 10.02.2022 has been upheld. The appeal has been rejected on the ground that the appeal is itself not maintainable in terms of Section 45 of the Tamil Nadu Society Registration Act, 1975.

3. The petitioner is aggrieved by a series of amendments that have been made to the bye-laws of IELC. There is some history to the matter. A retired Judge of this Court had been appointed as Administrator of the IELC on 31.07.2018. The learned Judge hearing C.S.No.741 of 2017 had thereupon received a memo dated 23.11.2021 from the Administrator, who had sought the following directions:-

"(i) Extending time for a period of 6 months to the Administrator to hold elections for IELC, from the date of registration of amendments to the 1959 Constitution and; Bye-Laws and thus render Justice.

(ii) Directing the Registration Department of Tamil Nadu Government to exempt various provisions of the Tamil Nadu Societies Registration Act 1975 including sections 2(j), 12, 15(3), 15(4), 16(3)(b)(i), 16(3)(b)(ii), 16(3)(b)(iii), 26(1), 53 and Rule 17(2) of the 1978 Rules framed thereunder to IELC from 19.01.2006 to the date of Registration of the proposed Amendments within a time frame as fixed by this Hon'ble Court and thus render justice.

(iii) Directing the Registrar of Societies, Chennai Central to register the proposed amendments to the 1959 Constitution and Bye-Laws of the India Evangelical Lutheran Church bearing Registration number 111959, within a time frame as fixed by this Hon'ble Court and thus render justice."



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4. That memo had been ordered by the learned Single Judge on 09.12.2021. Thus, with the ordering of the memo directing extension of time for a period of six months to hold elections, granting various exemptions under the Tamil Nadu Societies Registration Act, 1975 and further directing the Registrar of Societies, Chennai Central to register the proposed amendment to the 1959 Constitution and bye-laws of IELC, the matter has attained finality at that stage.

5. As against that order, the petitioner could very well have filed an Original Side Appeal. Rev.J.Mohan Raj and others had filed a Writ Petition before the Kerala High Court that had come to be disposed on 16.09.2021, being aggrieved by the directions issued by the Director of General Education in Kerala with regard to the amendment of 23 schools established by the IELC in Kerala. In that case, one Rev.M.Mohanan had been appointed as Manager of the educational agency of the Institutions under the corporate management of the Thiruvananthapuram Synod of IELC.

6. Challenging the order passed by the Kerala High Court on 16.09.2021, SLP (C) No. 18100 of 2011 dated 16.12.2021 had been filed wherein the following had been passed:-

"We have perused the application which is not on record but available to us electronically. We are not inclined to direct the Administrator to make changes as per the applicant's demand but the necessary action will be taken by the Administrator of his own wisdom. The application stand disposed of."

Learned counsel appearing for the Administrator/respondent No. 3 submits that GO 45 dated 17.02.2022 was issued by the Government



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yesterday, i.e. 17.02.2022, exempting from the various provisions of the Tamil Nadu Societies Registration Act, 1975 (for short, "the Act"). The Registrar will have to carry out the registration of the necessary changes under sub-Section (3) and issue a certificate under sub-Section (4) of Section 12 of the Act. Learned counsel states that the time period for doing the needful elapses on 27.02.2022.

Learned counsel for the Administrator/respondent No. 3 submits that on 29.01.2022, the Administrator/respondent No. 3 had issued a letter requiring all the congregations to send details on or before 28.02.2022 of the electorate. He submits that except one, none of the congregations have responded, including the petitioners.

Learned counsel further submits that he will require six months' time to carry out election process because it is a four tier process, elections can be held only on Sundays more so, by physical voting.

Learned counsel for the petitioners makes a grievance that the remit of the mandate to the Administrator did not include the right to make changes in the constitution and thus the endeavour made by him is not sustainable in law. The order on the original side of the High Court permitting those changes for which he sought the approval, has resulted in appeal being filed before the Division Bench of the High Court and a notice has been issued in the matter.

Another aspect which is pointed out by learned counsel for the petitioners is that an impasse is arising in the aspect of running of the institutions as in terms of the impugned order, the educational authorities in the States have been directed to grant approval to only such appointments as there the signature and seal of both - Rev.M. Mohanan and the Administrator appointed by the Madras High Court and if the candidate in question satisfies the eligibility requirements for the post in terms of the Kerala Education Act and Rules, 1958. The grievance is that the Administrator has agreed to co-sign only one of such cases and thus an impetus is required for the smooth functioning of the institution.



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In response to the aforesaid, learned counsel for the Administrator submits that the Administrator has not been able to co-sign the appointments because the Rule of Seniority is sought to be given a go-by and a number of representations has been received in this behalf.

Similarly, he submits that in case of a suspension order set aside by the State Government, a transfer is sought to be made which would be punitive in character.

On the latter aspect, we may have some reservations as the reinstatement may be made in the same place but if in an administrative exigency, transfer has to be made and is permissible, that cannot be really categorized as punitive in character.

Insofar as the appointment process is concerned, there is a little option but for the two persons to work in tandem and we have emphasized to the contesting parties that all this is a consequence of their continued battle over a period of time, not agreeing on anything, earlier Administrators resigning and thus the situation continues to prevail. If religious institutions want to get into an aspect of substantively controlling real estate, this is a natural consequence which will flow.

As far as the aspect of amendments are concerned, we are of the view that it is not appropriate for this Court to observe anything as that is a call which would have to be taken in the appeal stated to be filed by the petitioners.

There is little left for us to do in this matter now as all that we can say is that the Administrator must carry out the mandate of holding elections at the earliest in view of the conspectus of what we have recorded aforesaid but that in turn dependent on two aspects : 1) the cooperation of the congregations in sending the electoral list ; and 2) the final view which has to be taken in respect of the amendments proposed by the Administrator, which is the subject matter of the appeal before the Madras High Court.



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We close the proceedings with the hope that the difference of perception between the holders of religious mandate should be reconciled for the furtherance of a larger objective than a continuing battle inter se the parties which will keep on requiring an almost indefinite role of the Administrator. The special leave petition is disposed of accordingly.

7. Thus, as far as the challenge to the amendment was concerned, the Hon'ble Supreme Court vide order dated 18.02.2022, disposed the Special Leave Petition leaving it to the High Court to take a call on the amendments.

8. In OSA 70 of 2022, a Division Bench, of this Court, considered a challenge to order dated 09.12.2021 and, in its order dated 30.03.2022, took note of the fact that on 10.02.2022, in pursuance of order passed by the Hon'ble Supreme Court on 16.02.2021, the Government had amended the Rules as sought for by the learned Administrator under memo dated 23.11.2021. The Bench specifically noted that no appeal had been filed by those appellants as against the order of learned Single Judge dated 09.12.2021. The same position obtains in the present matter as well.

9. In conclusion, the Bench states that the State had already amended the Rules and there can be no intervention in the Original Side Appeal. That conclusion will bind the present writ petition as well.

10. In light of the discussion as aforesaid, this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.



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Index:Yes/No
Neutral Citation:Yes
ssm

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