



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 06.03.2024	Pronounced on 12.04.2024
----------------------------------	------------------------------------

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE R.SAKTHIVEL

O.S.A.Nos.198, 188, 190, 192 & 236 to 238 of 2023, 31 & 32 of 2024
and all the connected miscellaneous petitions

O.S.A.No.198 of 2023:-

1.Dr.A.Seshadri

2.A.Selvaraj

3.S.Robert

4.Elizabeth J.Rani

5.G.Nalan

6.A.Vedaiah

...Appellants

Vs.

1.Church of South India,
Represented by its Moderator
Most Rev. Dharmaraj Rasalam
CSI Synod Secretariat, CSI Centre,
No.5, Whites Road, Royapettah,
Chennai – 600 014.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

2.Church of South India Trust Association

Represented by its Hony Secretary
C.Fernandas Rathina Raj
CSI Synod Secretariat, CSI Centre,
No.5, Whites Road, Royapettah,
Chennai – 600 014.

3.Most Rev.Dharmaraj Rasalam

Moderator
Church of South India,
CSI Synod Secretariat, CSI Centre,
No.5, Whites Road, Royapettah,
Chennai – 600 014.

4.Reuben Mark

5.Zeam Enock

6.Sarjine Thomas

...Respondents

Prayer in O.S.A.No.198 of 2023:: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules, 1956 read with Clause 15 of the Letters Patent, praying to set aside the order dated 05.09.2023 in A.No.57 of 2023 in C.S.No.86 of 2022.

For Appellants : Mr.Vineet Subramani

For Respondents 1, 2 and 4 : Mr.V.Prakash, Senior Counsel
for M/s.Adrian D.Rozario

Respondents 3 and 6 : No appearance



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

All these appeals under Clause 15 of the Letters Patent are directed against the orders of the learned Single Judge made in various applications that were filed in C.S.Nos.86 of 2022 and 7 of 2023.

2. Both the suits are suits filed under Section 92 of the Code of Civil Procedure and they relate to the management and administration of the Church of South India, an un-registered body of persons which is in-charge of the functions of the protestant Churches in Southern India and in Sri Lanka. This un-registered body of persons christened as Church of South India came into existence on the 27th September 1947 and it is governed by a set of Rules that is called the Constitution of the Church of South India.

3. Disputes often arise regarding the management and conduct of the elections for various posts of Office Bearers in the Church of South India



and its other organizations called Church of South India Trust Association.

While Church of South India looks after the ecclesiastical functions, the Church of South India Trust Association, which is a Company registered under Section 8 of the Companies Act, 2013 (Section 25 of the Companies Act, 1956) takes care of the secular functions and administration of the properties. All the properties of the Church vest in the Church of South India Trust Association.

4. C.S.No.86 of 2022 came to be filed by some of the members of the Church seeking the following reliefs:-

The plaintiff, therefore, prays that this Hon'ble Court may be pleased to pass a judgment and decree:

a) Frame a scheme under Section 92(g) and (h) of the Code, setting out the conditions for appointment and terms of office and prescribing disqualification for the members of the Synod of the 1st defendant.

b) Removing the 3rd defendant from the office of Moderator of the Church of South India, the 1st defendant herein,

c) Consequently, removing the 3rd defendant as the Chairman of the CSITA, the 2nd defendant herein,



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

- d) Directing the 1st defendant to hold fresh elections to the office of the Moderator of the Synod of the 1st defendant,*
- e) And to grant such further reliefs as this Hon'ble Court may see fit to grant in the facts and circumstances of this case.*

The background facts, which, according to the plaintiffs in the said suit, forced them to approach this Court, are as follows:-

5. The plaintiffs who are six in numbers are members of the Church and it is claimed that they have been the Members of the Church for considerably long period. It is also claimed that the plaintiffs had held certain vital positions in the management of the Church in the past. The 3rd defendant in the suit Most Rev.Dharmaraj Rasalam was elected as a Moderator in the election held on 11.10.2020 for the three years period ending on 11.10.2023. Contending that the 3rd defendant was accused of several criminal offences and almost ten FIRs were pending against him on the date of his nomination as the Moderator, the suit came to be filed seeking a Scheme primarily contending that the Constitution of the Church



does not prescribe any qualification or dis-qualification for the post of Moderator and this had led to persons with criminal background as well as criminal antecedence to occupy the post of the Moderator, which according to the plaintiffs, is the most powerful post in the Church. Pointing out the other anomalies, the plaintiffs sought for a framing of Scheme and removal of the 3rd defendant as a Moderator.

6. As per the Constitution of the Church and the memorandum of Association of the Church of South India Trust Association, which is a Section 8 Company, the Moderator becomes the ex-officio Chairman of the Church of South India Trust Association also, thereby, the Moderator controls the entire properties of the Church of South India which are valued a few thousand Crores. The plaintiffs would contend that the post of the Moderator being a very vital post in the administration of the Church, there should be clear cut qualification for a person to be appointed as a Moderator.

7. Therefore, according to the plaintiffs there was imminent need for a



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

Scheme to be framed for administration of the Church providing for qualifications and dis-qualifications for persons who hold office in the Church as well as the Trust Association. This, suit was filed and leave under Section 92 was granted in A.No.210 of 2022. During the pendency of this suit, the plaintiffs also sought for an order of injunction restraining the respondents therein viz., defendants 2 to 9 from conducting any Diocesan Council meeting either by zoom mode or any other mode, the meeting of Synod Council, Executive Committee or working committee for approval of the implementation of the resolution dated 07.03.2023 circulated by the defendants 2 to 5 and passing any resolution approving the disputed resolution dated 07.03.2022 pending disposal of the suit.

8. In O.A.No.819 of 2022 the plaintiffs sought for an injunction restraining the respondents from conducting any election process for the Church of South India Synod for the Triennium between 2023 – 2026 without streamlining the Electoral College with the aid of an Administrator to be appointed by this Court.



WEB COPY

9. A.No.5961 of 2022 was filed seeking an appointment of an interim Administrator to manage the affairs of the 1st respondent and for enquiring in to and correcting the manipulations, illegalities and streamlining the various organisations including the Synod Council of the 1st defendant and conducting forthcoming Church of South India elections for Triennium 2023-2026.

10. Four more applications were filed by the plaintiffs in C.S.No.86 of 2022 in A.Nos.54 to 57 of 2023 with the following prayers:-

A.No.54 of 2023:-

Application praying that this Hon'ble Court be pleased to declare as invalid, illegal, null and void, all the proposed amendments of the CIS Constitution proposed by the CSI Synod at its meeting dated 07.03.2022 as copy of which proposed amendments is set out in Annexure A.

A.No.55 of 2023:-

Application praying that this Hon'ble Court be pleased to stay the operation of the proposed amendments of the CIS Constitution proposed by the CSI, Synod at its meeting dated



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

07.03.2022 a copy of which proposed amendments is set out in Annexure A.

A.No.56 of 2023:-

Application praying that this Hon'ble Court be pleased to Suspend the 3rd respondent from acting as the Moderator of the 1st respondent, Church of South India.

A.No.57 of 2023:-

Application praying that this Hon'ble Court be pleased to appoint an Interim Administrator to take over and manage the affairs of the 1st respondent, Church of South India, including to conduct the upcoming elections.

11. During the interregnum the office bearers of the Church of South India Synod had passed resolutions. It is claimed that the resolutions were passed by the special Synod Council on 07.03.2022 at Trichirapalli approving certain amendments proposed to the Constitution of the Church of South India and this led to a second suit in C.S.No.7 of 2023 being filed seeking the following reliefs:-

Therefore the plaintiffs pray for a judgment and decree:



(a) Declaring the notification dated 27.12.2022 issued by the 1st defendant through the 4th defendant and all connected and consequential actions seeking to carry out or implement the amendments including the amendment seeking to enhance the retirement age of the Bishops and Presbyters as 70 years, allegedly passed by the Special Synod Council meeting held on 7.3.2022 at Tiruchirapalli, as illegal void and non-est in law.

(b) Permanent injunction restraining the defendants 2 to 5 and their men and agents from proceeding with any meeting of Church of South India Synod council or any other meeting for the election of Church of South India Synod Council and office bearers, for the forthcoming triennium 2023-2025 on the basis of the impugned notification dated 27.12.2022.

(c) Permanent injunction restraining the defendants and their men and agents from in any manner amending the Constitution/ Byelaws of the 1st defendants or implementing any amendments as per the Special Synod council meeting resolution dated 7.3.2022 held in Tiruchirapalli or the impugned notification dated 27.12.2022.

(d) Appointing a former judge/s of this Hon'ble Court as administrator(s) for framing guidelines and for good administration and managing the affairs of the 1st defendant



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

and for enquiring into all pending disputes affecting or relating to the electoral college of Church of South India and the constituent dioceses of the 1st defendant and to streamline the electoral college and thereafter conduct the election for the CSI Synod council for the triennium 2023-2025 strictly in accordance with the Constitution of the 1st defendant.

(e) To the cost of the suit

(f) To pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

12. In that suit also several applications were filed seeking interim reliefs in A.Nos.21, 22 and 190 of 2023 with the following prayers:-

O.A.No.21 of 2023:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents/ defendants 2 to 5 and their men and agents from proceeding with any meeting of Church of South India Synod council or any other meeting for the election of Church of South India Synod Council and office bearers, for the forthcoming triennium 2023-2025 on the basis of the impugned notification dated 27.12.2022 or



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

otherwise, pending disposal of the above suit.

WEB COPY

O.A.No.22 of 2023:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents/ defendants and their men and agents from in any manner amending the Constitution/ Byelaws of the 1st respondent/ defendant or implementing any amendments claimed to have been passed in the Special Synod council meeting dated 07.03.2022 in Tiruchirapalli or the impugned notification dated 27.12.2022, pending disposal of the above suit.

O.A.No.190 of 2023:-

Original Application praying that this Hon'ble Court be pleased to appoint a former judge/s of this Hon'ble Court as interim administrator(s) for framing guidelines and for good administration and managing the affairs of the 1st respondent/ defendant and for enquiring into all pending disputes affecting or relating to the electoral college of Church of South India Synod and the constituent dioceses of the 1st respondent/ defendant and to streamline the electoral college and thereafter conduct the election for the CSI Synod council for the triennium 2023-2025 strictly in accordance with the constitution of the 1st respondent/ defendant,



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

pending disposal of the above suit.

WEB COPY

13. The 7th and 8th defendants in C.S.No.86 of 2022 also made an application in A.No.2584 of 2023 seeking appointment of an interim administrative committee headed by a Retired Judge of this Court to manage the affairs of the Synod till the disposal of the suit.

14. All these applications were resisted by the office bearers of the Church of South India, who were shown as the defendants in the suit, contending that the Constitution of the Church of South India which was framed in 1947 which has been amended from time to time to suit the present day needs takes care of all exigencies and therefore there was actually no need for framing a Scheme for administration. It was also contended that the Church of South India being an un-registered body of persons, suits filed without obtaining leave under Rule 8 of Order I of the Code of Civil Procedure should not be entertained and no interim orders can be granted in such suits. On the merits, it was contended that the amendments proposed are only with a view to provide an opportunity for



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

more people to participate in the administration of the Church of South India and there was no motive or any evil design in bringing up the amendments.

15. As regards the allegations against the 3rd defendant in C.S.No.86 of 2022 regarding the pendency of the criminal cases, it was contended that those criminal cases were not filed against him in his individual capacity, but, were filed in the capacity of Chairman of the Institution, where he was not involved in the day to day activities. It was also contended that he had in fact offered to re-fund the monies that were allegedly collected by the Institution without his knowledge.

16. The learned Single Judge who took up all the applications together concluded that the process of amendments to the Constitution of the Church of South India was not complied with in its letter and spirit and therefore the amendments brought about to the Constitution cannot be implemented. On the said finding the learned Single Judge held that the elections of the Moderator is vitiated. Having held so, the learned Judge



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

appointed a Retired Judge of this Court to be an election officer to conduct the elections after ensuring proper composition of the Synod (Electoral College) in accordance with the Constitution of the Church of South India sans the amendments.

17. As far as the election to the other posts are concerned the learned Judge concluded that though there were infirmities in the Electoral College that may not really affect the election in view of the number of votes polled by each candidate and therefore the other office bearers viz., the Deputy Moderator, General Secretary and the Treasurer were allowed to function. While disposing of the applications in C.S.No.86 of 2022 on the above lines, the learned Judge closed the applications in other two suits giving liberty to the plaintiffs therein to apply for interim relief after obtaining leave under Order 1 Rule 8 of the Code of Civil Procedure. It must also be pointed out that the learned Judge viewed the video recordings of the election of the office bearers of the Synod by the electoral College viz., the members of the Synod. Aggrieved by these orders these appeals are before us.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

18. The Church of South India has also filed appeals in O.S.A.Nos.31 and 32 of 2024 against the orders, particularly against the order concluding that the amendments were not carried out in accordance with the Constitution of Church of South India and the requirements for carrying out valid amendments were not adhered to. While the other appeals are by the other applicants whose applications were either closed or dismissed.

19. Before venturing into the merits and de-merits of the claims of the rival parties we would like to set out the Constitution of the Church of South India which provides for a stage-wise representation to all baptised members of the Church. The base or the foundation of the Church is the Church Council. All baptised children are the members of the Church and they share the privileges of the members of the Church. All adult members of the Church are called a communicant members who have the right to vote.

20. There are three tiers in the administration of the Church of South



India. The first tier is the Church Council, which necessarily consists of individual Churches and their members and the Clergymen attached to those Churches called the Deacons and Presbyters. The presbyters are generally in-charge of the pastorate which is the larger body. A group of Churches depending upon the number of members are constituted as a Diocesan Council, which forms the second tier and the Supreme body is the Synod which forms the third tier or the upper most tier in the management of the Church. Each Diocesan Council has a separate and independent constitution for itself and local congregations or the Churches are governed by the diocesan Constitution.

21. The Diocesan Council will consist of a Bishop and Assistant Bishop if any, all presbyters who are in active service in the Diocesan Council, lay representatives who are elected, nominated and who shall be twice the number of the presbyters who are the members of the Diocesan Council. The Bishop of the diocese will be ex-officio President of the Diocesan Council. The Diocesan Council will also elect an executive committee to manage the affairs of the diocese. The Synod, the supreme



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

body consists of the following as its members:

WEB COPY

- i) All diocesan Bishops and Assistants Bishops, if any, and Bishops serving the Synod in their capacity;
- ii) The General Secretary and the Treasurer of the Synod;
- iii) The President and General Secretary of Women's Fellowship and two members of the Order of Sisters nominated by the Order Committee;
- iv) Presbyters and lay persons representing various Dioceses who are elected in proportion to the number of baptised members of the Dioceses. The number varies according to the total number of baptised members in a Diocese.

22. The Constitution of the Church of South India also lays down that at least 25% from among the Presbyters and at least 25% from among the lay persons shall be below the age of 35 years and out of the total lay representatives of every Dioceses, at least 25% shall be women.

23. Every Diocese is expected to hold fresh elections of ministerial and lay representative of the Diocese for each ordinary meeting of the



Synod, which is to take place once in every three years. A duty is also cast upon the Diocesan Council to provide alternative ministerial and lay representative to take the place of any representative who suffers any disqualification during the period. The Constitution also provides for validating the actions of the Synod, if any Diocesan Council is unable to meet and elect its representatives or the elected representatives are unable to be present at the meeting of the Synod.

24. The Constitution also provides for age of retirement of the Bishops as well as the other clergymen, who are considered to be the employees of the Church. The office bearers of the Synod are the Moderator, Deputy Moderator, General Secretary and the Treasurer. While the Moderator and the Deputy Moderator are to be elected by the ballot of the Synod, from among the Diocesan Bishops of the Church, the General Secretary and the Treasurer can also be from among the lay persons. The process of election of the Moderator as set out in the Constitution of the Synod is as follows:-

The Diocesan Bishops shall meet and nominate one person amongst



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

themselves to be the Moderator for the Triennium. The said nomination is placed before the Synod which consists of representatives of various Dioceses and if the nomination is accepted by the majority of the Synod members, the nominee is appointed as the Moderator. If the nominee does not get the required number of affirmative votes in his favour, then the Bishops meet again to nominate another person. As far as the non-clergymen viz., the General Secretary and Treasurer are concerned, a nomination Committee is formed and the Committee scrutinizes the nominations and puts them up for vote by the representatives of the Synod at the ordinary meeting of the Synod.

25. It is in this background the disputes arose when the 3rd defendant was nominated as the Moderator by the diocesan Bishops for the Triennium between 2020 – 2023, where the plaintiffs in C.S.No.86 of 2022 complained that there are several criminal cases that are pending against the 3rd defendant and therefore he cannot occupy the post of the Moderator. Even during the pendency of the said suit yet another suit in C.S.No.274 of 2022 came to be filed with the following prayers:-

20/70



WEB COPY

Therefore the plaintiff prays for a decree and judgment

(a) Declaring the resolution dated 7.3.2022 of 1st defendant declared as having passed in the special Synod council meeting held in Tiruchirapalli including the amendment seeking to amend Chapter V clause 12(a) of the Constitution of South India and enhancing the retirement age of the Bishop as 70 years, as manipulated, illegal, void and non-est in law.

(b) Appointing a former judge/s of this Hon'ble Court as administrator(s) for administration and managing the affairs of the 1st defendant and for enquiring, correcting the manipulations and illegalities and streamlining the electoral college including nomination to its Synod Council, of the 1st defendant and conducting the forthcoming CSI election for the term 2023-2026 in a free and fair manner, strictly as per the constitution of CSI.

(c) Permanent injunction restraining the defendants 2 to 8 from conducting any diocesan council meeting, either by zoom mode or any other mode, CSI Synod council, executive committee or working committee of CSI Synod for approval or implementation of the impugned resolution dated 7.3.2022 circulated by the defendants 2 to 5 and passing any resolution



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

approving the disputed resolution dated 7.3.2022.

WEB COPY

(d) Permanent injunction restraining the defendants 2 to 5 from conducting any election process for the forthcoming CIS Synod council election for the term 2023-2026 prior to streamlining the electoral college by an administrator(s) to be appointed by this Hon'ble Court, or altering the electoral college by any means.

(e) To pay the cost of the suit

(f) To pass such further or other orders as this Hon'ble Court may deem fit and property in the circumstances of the case.

26. The applications in A.Nos.818, 819 and 5961 of 2022 were filed in the said suit. These applications were closed along with the other applications filed in C.S.No.7 of 2023 granting liberty to the applicant to seek interim orders after obtaining permission under Order 1 Rule 8 of the Code of Civil Procedure. The entire issue revolves around the election of the 3rd defendant as a Moderator and the amendments that are attempted to be carried out to the Constitution of the Church of South India and the bye-



laws.

WEB COPY

27. While the learned Single Judge has found that the amendments to the Constitution have not been carried out in the manner provided for, he has upheld the amendments to the bye-laws. Since the amendments to the bye-laws did not require an elaborate procedure as required for amendment to the Constitution. Of course, several grievances are ventilated by the plaintiffs regarding the constitution of the Synod itself including violation of the constitutional requirements regarding the percentage of members below the age of 35 years and the percentage of women members in the representatives of each Diocese.

28. The learned Single Judge was not persuaded to set aside the elections for the other posts, since the number of members who supported those elected candidates was by far ahead of the number of members who opposed the election and according to the learned Single Judge these minor discrepancies in the formation of the Electoral College would not have the effect of dis-lodging the elected candidates. The learned Single Judge went



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

by the number of votes polled for and against the candidates and found that in view of the overwhelming support the elected candidates had secured in the Synod elections, it may not be in the interest of Justice to set aside all the elections and appoint an Administrator to conduct a fresh election. However, when it came to the post of Moderator the learned Judge found that the amendments to the Constitution were not carried out in the manner required by the Constitution and therefore as per the un-amended constitution, the 3rd defendant was over aged and he ought to have retired upon attaining the age of 67 years. Therefore, his election was set aside, leading to appointment of retired Judge of this Court as election officer.

29. We have heard Mr.Vineet Subramani, learned counsel for the appellant in O.S.A.No.198 of 2023 and for the 1st respondent in O.S.A.Nos.31 and 32 of 2024, Mr.S.Thanka Sivan, learned counsel for the appellant in O.S.A.Nos.188, 190 and 192 of 2023 and Mr.S.Thanka Sivan, learned counsel for Mr.R.Bharanidharan, learned counsel for the appellants in O.S.A.Nos.236 to 238 of 2023 and Mr.V.Prakash, learned Senior Counsel for Mr.Adrian D.Rozario, learned counsel for the appellant in O.S.A.Nos.31



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

and 32 of 2024, for the respondents 1, 3 to 5 in O.S.A.Nos.188, 190 and 192 of 2023, for the respondents 1, 2 and 4 in O.S.A.No.198 of 2023 and for the respondents 1 to 5 in O.S.A.Nos.236 to 238 of 2023.

30. All the learned counsel have made elaborate submissions regarding the validity of the elections, requirement of permission under Order I Rule 8 of the Code of Civil Procedure, the maintainability of the suit under Section 92 of the Code of Civil Procedure and on various other issues touching upon the amendments to the Constitution.

31. We have considered the rival submissions of the learned counsel on either side.

32. We must at this juncture point out that we had disposed of O.S.A.No.69 of 2022 on 27.02.2024 upholding the order of injunction granted in O.A.No.115 of 2022 in C.S.No.45 of 2022, wherein, the challenge was to the notice convening the special synod meeting on the 7th and 8th of March 2022. We had after referring to Rule 20 of Chapter IX of



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

the Constitution of the Church of South India, which deals with the meetings of the Synod, which reads as follows:-

*“20.An ordinary meeting of the Synod shall be held once in every three (2015) years at such time and place as the Executive Committee may determine. **Special meetings of the Synod may also be summoned by the Executive Committee.**”*

concluded that in the absence of a resolution of the meeting of the Executive Committee in its meeting held on 12.01.2022 the very convening of the special meeting of the Synod on 7th and 8th of March 2022 is *prima facie* vitiated and some of the members of the Executive Committee of the Synod itself have disputed the claim that the Executive Committee in its meeting held on 12.01.2022 had passed a resolution convening the special session of the synod on the 7th and 8th of March 2022. We had also pointed out that absence of any denial by the respondents in that application, particularly, the office bearers of the Church of South India to the specific allegation that the Executive Committee did not pass a resolution on 12.01.2022 calling for special meeting of the Synod on 7th and 8th of March 2022.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

33. On the basis of our decision in O.S.A.No.69 of 2022, we had disposed of the two appeals filed by the Bishop of Madras Rt. Rev. Dr.J. George Stephen in O.S.A.Nos.189 and 191 of 2023 and the two appeals filed by the Moderator/ 3rd defendant in C.S.No.86 of 2022 Most Rev. Dharmaraj Rasalam in O.S.A.Nos.204 and 205 of 2023 as having become ineffective.

34. In these batch of appeals, the **O.S.A.Nos.31 and 32 of 2024** have been filed by the Church of South India Trust, wherein the challenge is to the orders made in A.Nos.54 and 55 of 2023, which also relate to the very same resolutions passed by the Church of South India Synod at its meeting on 07.03.2022. As already stated, while deciding O.S.A.No.69 of 2022 we have held that the very special meeting of the Church of South India Synod held on 07.03.2022 was not properly convened because there was no resolution of the Executive Committee authorising a special meeting of the Synod passed on 12.01.2022. Therefore, these appeals by the Church of South India challenging the conclusions of the learned Single Judge to the effect that the amendments to the Constitution were not passed after



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

observing the procedure prescribed in the Constitution of the Church of South India also have become ineffective, in view of the finding recorded by us in O.S.A.No.69 of 2022. Hence, these appeals by the Church of South India are **dismissed** as having become ineffective.

35. Adverting to the appeals filed by the plaintiffs in C.S.No.274 of 2022 viz., O.S.A.Nos.236, 237 and 238 of 2023, the applications have been closed by the learned Single Judge on a finding that the plaintiff in those suits has not obtained leave to file the suit under Order I Rule 8 of the Code of Civil Procedure. During the course of hearing, we found that the application filed by the plaintiff in the said suits seeking permission to file suit in representative capacity under Order I Rule 8 of the Code of Civil Procedure has been not pressed by the learned counsel for the plaintiff. Therefore, the learned counsel for the plaintiff in those suits has filed C.M.P.No.4371 of 2024 seeking leave to file the suit in the representative capacity in these appeals contending that an application under Order I Rule 8 can be filed at any stage of the proceedings.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

36. While we have no doubt about the proposition that Order I Rule 8 application can be filed at any stage of the proceedings and non-filing of the same is a curable defect, we do not think we can entertain the application in the appeals against the interlocutory orders made in the suit, particularly closing the applications on the ground of absence of leave under Order I Rule 8.

37. We should not be taken to have approved the orders of the learned Single Judge closing the applications on the ground permission under Order I Rule 8 has not been obtained. However, since no application under Order I Rule 8 was filed before the trial Court and whatever application that was filed was withdrawn we do not think we could entertain these appeals against the orders closing the applications in C.S.No.274 of 2022 and we leave it open to the plaintiff to file a fresh application in the said suit under Order I Rule 8 and thereafter seek interlocutory orders in the said suit. Original Side Appeals filed by the plaintiff in C.S.No.274 of 2022 viz., **O.S.A.Nos.236, 237 and 238 of 2023** are therefore **dismissed** without costs.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

38. The application filed by the plaintiff in that suit viz., **C.M.P.No.4371 of 2024** is also **dismissed** with liberty to the plaintiff to move the learned Single Judge seeking leave to file the suit.

39. This leaves us with O.S.A.Nos.198, 190, 192 and 188 of 2023. O.S.A.No.198 of 2023, which is by the plaintiffs in C.S.No.86 of 2022 and O.S.A.Nos.188, 190 and 192 of 2023 which are at the instance of the plaintiff in C.S.No.7 of 2023.

40. O.S.A.No.198 of 2023 is against the order passed in A.No.57 of 2023 made in C.S.No.86 of 2022, which is an application for appointment of an Administrator to manage the affairs of the Church of South India till such time proper elections are conducted after framing proper Scheme for the management of the Church of South India.

41. As far as the other three appeals viz., O.S.A.Nos.188, 190 and 192 of 2023 are concerned they are by the plaintiffs in C.S.No.7 of 2023 where the applications were filed by them seeking an injunction restraining the



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

respondents 2 to 5 from proceeding with any meeting of the Church of South India Synod Council or any other meeting or election of Church of South India Synod for the forthcoming Triennium 2023 – 2025 on the basis of the notification dated 27.12.2022 interim injunction restraining the respondent from amending the Constitution or bye-laws of the Church of South India or implementing the amendment claimed to have been passed by the special Synod Council meeting dated 07.03.2022 or the impugned notification dated 27.12.2022.

42. The prayer in the third application viz., A.No.190 of 2023 is for appointment of an Administrator for framing guidelines for good administration and management of the affairs of the Church of South India.

43. The learned Single Judge while considering the application in A.No.57 of 2023 viz., the application for appointment of an Administrator had concluded that since the other office bearers except the Moderator viz., Deputy Moderator, General Secretary and Treasurer are shown to have been elected by a big margin of affirmative votes in their favour, their elections



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

will not be affected by the discrepancies pointed out by the learned counsel for the parties in Constitution of the Electoral College.

44. The essence of the grievances of the applicants/ appellants in these appeals is that the learned Single Judge has brushed aside various irregularities and instances of maladministration pointed out by the applicants and has only gone by the Rule of brutal majority. The factors that were projected as vitiating factors are as follows:-

The ratifications of the amendments required to be done by various Diocesan Councils were pushed through without complying with the mandatory notice requirements and this fact was recorded by the learned Judge himself in the order dated 12.01.2023.

45. It is also the contention of the learned counsel for the appellants that there was no reasonable time in convening the meeting of the Diocesan Councils which has to ratify the amendments. This resulted in most of the Diocesan Councils acting in a great hurry in convening the meetings to ratify the proposed amendments. The learned counsel would also contend



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

that the Electoral College of the Synod consists of representatives of various Diocesan Councils, elected by them. The very constitution of the Church of South India provides that the representatives of each of Diocesan Councils who are entitled to vote in the Synod should be in a particular proportion.

46. Chapter IX of the Constitution of the Church of South India which deals with the constitution of the Synod declares that the Synod will be supreme governing body and the members of the Synod are the Diocesan Bishops and the Assistant Bishops, if any, other Bishops serving in the Synod, the General Secretary and the Treasurer who are to be elected by the Synod representatives nominated by the various Diocesan Councils. The President and General Secretary of the women's fellowship and two members of the order of Sisters nominated by the Order Committee.

47. Apart from the above, Presbyters and lay persons who were elected by the Diocese concerned depending on the number of baptised members of the Diocese. It will be convenient to extract Clause (d) of Rule 2 of Chapter IX of the Constitution of the Church of South India, which



fixes the ratio at which the members are to be elected by the Diocesan Councils.

(d) Presbyters and lay persons representing the Dioceses and elected according to the following table:

For upto 10,000 baptised members – 2 presbyters and 4 lay persons

Above 10,000 but below 20,000 baptised members – 3 presbyters and 6 lay persons

For 30,000 and above but below 50,000 – 5 presbyters and 7 lay persons

For 50,000 and above but below 75,000 – 6 presbyters and 8 lay persons

For 75,000 and above but below 100,000 – 6 Presbyters and 9 lay persons (1999)

For 100,000 and above but below 150,000 – 6 Presbyters and 10 lay persons (1999)

For 150,000 and above – 6 Presbyters and 11 lay persons (1999).

Out of the total representatives from the Diocese to the Synod at least 25% from among the Presbyters and at least 25% from among the lay persons shall be under the age of 35 years. Out of the total lay representatives from a Diocese to the Synod at least 25% shall be women.



WEB COPY

48. The Constitution also provides that the Moderator who is elected shall appoint 10 members as additional members of the Synod, apart from the representatives nominated by each Diocese under Clause (d) above.

49. One of the contentions that is urged on behalf of the appellants in O.S.A.No.198 of 2023 and O.S.A.Nos.188, 190 and 192 of 2023 is that even as per the list of representatives that were provided by the Synod before the learned Single Judge, the ratio that was laid down in Clause (d) of Rule 2 of Chapter IX extracted above was not complied with and therefore there was a serious flaw in the very constitution of the Electoral College for election of the office bearers of the Synod viz., the Moderator, the Deputy Moderator, the General Secretary and the Treasurer.

50. Vehemently attacking the conclusion of the learned Single Judge that though there is a flaw in the constitution of the Electoral College itself that may not vitiate the election, inasmuch as the number of votes polled by the elected candidates is far ahead than the number of negative votes. The



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

learned counsel for the appellants in all these appeals except O.S.A.Nos.31 and 32 of 2024 would submit that once the constitution of the Electoral College is found to be flawed the election has to go and the office bearers so elected should not be allowed to function.

51. Drawing our attention to the repeated conclusions of the learned Single Judge that there are certain discrepancies in the number of members elected by each of the Diocesan Councils to represent them at the Synod meeting, the learned counsel would submit that having concluded that there are serious discrepancies, the learned Judge ought not to have gone ahead to confirm the election on the ground of majority.

52. Our attention is also drawn to the findings of the learned Judge with reference to the elections. The learned Judge has pointed out that the affirmative votes in favour of the Deputy Moderator, General Secretary and the Treasurer are much higher than the negative votes in their favour and therefore the elections need not be set aside.



WEB COPY

53. The learned Judge though had concluded that there were certain irregularities in the constitution of the Electoral College itself including the fact that the Moderator was allowed to nominate 15 members instead of 10 members by virtue of the amendment, which is held to be illegal by the learned Judge himself, the learned Judge has concluded that such irregularities by themselves would not have impacted the election based on the number of affirmative votes and the number of negative votes. It is the contention of the learned counsel appearing for the appellants/ plaintiffs in the suits that such a conclusion shall not be sustained by us.

54. Reliance is placed on the judgment of the Division Bench of this Court in *K.R.M.Singaram Vs. K.Srinivasan Aiyangar and others* reported in *1927 Vol XXV LW 594*, wherein the Division Bench had held that unless there is some provision to the contrary, the validity of the election depends upon the regularity of the procedure, according to which it is held and not upon the results which may by accident be the same if it had been regularly conducted. While deciding on the question as to whether the irregularity in the procedure for election would invalidate the election, despite the fact that



the result would be the same even it had been held after curing the irregularity could be a ground to sustain the election, the Division Bench of this Court observed as follows:-

With regard to the 2nd point, the voters' list dated from 1908 and such a list cannot be held to be in compliance with R. 14, which requires that the committee should keep a register of voters. A list so antiquated cannot be a register of voters at all, because a very large proportion of persons eligible to vote were omitted from it. This is clear from the circumstances that as many as 180 applications had been received for inclusion in the list and were still kept pending, a circumstance which I think clearly differentiates the facts of this case from those considered in Tiruvengada v. Ranga(1). I am unable to accept the suggestion, that the matter was of no practical importance because the majority of the votes obtained in the event was such that even if all the 180 had been included on the other side the result would have been the same. Unless there is some provision to the contrary the validity of the election depends upon the regularity of the procedure according to which it is held and not upon the results, which may by accident be the same if it had been regularly conducted.



WEB COPY

55. Our attention is also drawn to the judgment of the Hon'ble Supreme Court in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani* reported in **1957 SCR 68**. The validity of the electoral roles that were prepared for the election to the Ajmeer – Merwara Municipalities was considered by the Hon'ble Supreme Court and while deciding on the question as to whether the defect in the Electoral roles would vitiate the elections, the Hon'ble Supreme Court held that election based on a defective Electoral roles or the Electoral College cannot be upheld on the ground that it did not have an impact on the results of the elections.

56. Reliance is also placed on the judgment of the Hon'ble Supreme Court in *Bar Council of Delhi and others Vs. Surjeet Singh and others* reported in **1980 (4) SCC 211** in support of the claim that the elections held on the basis of a defective electoral role or a rule, the introduction of which itself is flawed cannot be a ground to uphold the elections.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

57. Elaborating on the issue both Mr.Vineet Subramani and Mr.S.Thanka Sivan, learned counsel would submit that while the learned Judge has found that the representatives of the Diocesan Council have not been elected in accordance with the constitution and hence the very constitution of the Electoral College was flawed which would have the effect of invalidating the elections of the office bearers of the Synod. They had taken us through the list of Electoral College / list of members who participated in the election meeting of Synod conducted at Hubli from 13.01.2023 and 15.01.2023 to demonstrate that there were several serious flaws in the very constitution of the Electoral College. They have drawn our attention to the nominees of each and every Diocese and pointed out that the composition is not as per Clause (d) of Rule 2 of Chapter IX extracted by us above.

58. We have gone through the list of representatives furnished and we find that out of 19 Diocesan Councils, at least 11 of them do not comply with the requirements of the Constitution regarding nominated members. The bye-laws of the Church when it deals with the membership of the



Synod provides for a procedure for calculating the minimum number of members, who should be below the 35 years of age and the same reads as follows:-

2. Membership in the Synod

*a) Diocesan representatives are freshly elected for every **ordinary** meeting of the Synod. Those who attend shall sign the Synod membership register. Only those who sign the register are fully enrolled members and competent to vote and serve on the Executive Committee.*

2 (d) For calculating the number of persons under 35 years of age, and the number of women to be elected to the Synod, the following table shall be followed.

Dioceses having:

- | | |
|---|---|
| <i>1) 1 Presbyters and 4 lay persons-</i> | <i>At least one woman and one Presbyter or lay persons under 35</i> |
| <i>2) 3 Presbyters and 5 lay persons-</i> | <i>At least one woman, one Presbyter and one lay person to be under 35</i> |
| <i>3) 4 Presbyters and 6 lay persons-</i> | <i>At least two women, one Presbyter under 35 and one lay person to be under 35</i> |
| <i>4) 5 Presbyters and 7 lay persons-</i> | <i>At least two women, one Presbyters under 35, and two lay persons under 35</i> |



- 5) 6 Presbyters and 8 lay persons- At least two women, one Presbyter under 35, and two lay persons under 35
- 6) 6 Presbyters and 9 lay persons- At least two women, one Presbyter under 35, and two lay persons under 35
- 7) 6 Presbyters and 10 lay persons- At least three women, one Presbyter under 35, and three lay persons under 35
- 8) 6 Presbyters and 11 lay persons- At least three women, one Presbyter under 35, and three lay persons under 35

Note: 1) It is made clear that the intention of the Rule is that the representation of women and your (persons under the age of 35) should be ensured. However women under the age of 35 may be counted as youth also for satisfying the purpose of this rule.

2) The members elected under the category of persons under the age of 35 should not have completed the age of 35 years on the 1st day of January of the year in which the Synod is held.

3) The list of Synod members elected by the Diocesan council should be communicated to the General Secretary of the Synod in the form prescribed under signature of the secretary of the Diocesan Council.



59. The above provision would lay down the composition of representatives nominated or elected by each Diocesan Council to represent them in the meetings of the Synod. If we are to test as to whether the list that has been furnished by the Church of South India disclosing the number of representatives who had participated in the election meeting of the Synod held on 13th and 15th of January 2023 satisfy the requirements above, we find that at least insofar as the 11 Diocese are concerned, the bye-laws relating to the number of members who should be below the age of 35 years and the number of women members has not been complied with. Therefore, it is clear that the Electoral College itself is flawed.

60. The learned Single Judge had held that in view of the vast difference between the number of affirmative votes and the negative votes for the post of Deputy Moderator, General Secretary and the Treasurer these defects in the Electoral College would not have an impact on the results and therefore he is not interfering with the elections.

61. We are afraid that the said conclusion of the learned Judge is



against the settled judicial opinion. Once it is found that the constitution of the Electoral College itself is flawed, the fact that it will not impact the results cannot form the basis for a decision. The possibility of there being a swing in the mood of the other members depending upon the addition or change in one of the members of the representatives cannot be ruled out and therefore at least insofar as the election laws are concerned, a strict adherence to the procedure has to be followed. In this context the following observations of the Hon'ble Supreme Court in ***Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*** (noted *supra*) would be very relevant.

12. It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections



held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and insofar as the rules which were thus framed omitted these provisions they were defective.

13. It was urged that the expression “the final printed roll for the Parliamentary Constituency” predicated that the electoral roll for the Parliamentary Constituency had been finalised after going through the whole procedure in accordance with the provisions of the Representation of the People Act, 1950 (43 of 1950) and, therefore, there was no necessity for making any further provision of that nature in the matter of the electoral roll of the Municipality. This contention is unsound for the simple reason that by using this phraseology the whole of the procedure laid down in the Representation of the People Act, 1950 (43 of 1950) is not bodily incorporated in the Ajmer-Merwara Municipalities Regulation, 1925 (6 of 1925). Neither the Regulation nor the Rules which have been framed by the Chief Commissioner in exercise of the powers conferred under Section 43 of the Regulation make any mention of any such incorporation nor is it possible to urge that, merely because the electoral roll for the



Parliamentary Constituency was treated as the basis for the electoral roll of the Municipality, these provisions were bodily incorporated in the Rules. If Rules 7 and 9 above referred to were intended to form a complete code for the finalisation of the electoral roll of the Municipality they did not serve the intended purpose and were either inconsistent with the provisions of Section 30, sub-section (2) of the Regulation or were defective insofar as they failed to provide the proper procedure for taking of the steps hereinabove indicated for finalising the electoral roll of the Municipality. If that was the true position the electoral roll of the Municipality which had been authenticated and published by the Chief Commissioner on August 8, 1955, was certainly not an electoral roll prepared in accordance with law on the basis of which the elections and poll to the Ajmer Municipal Committee could be held either on September 9, 1955, or at any time thereafter.

62. We have also adverted to the judgment of the Division Bench of this Court in ***K.R.M.Singaram Vs. K.Srinivasan Aiyangar and others*** (noted *supra*) in the earlier part of this judgment which also takes a similar view.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

63. Mr.Vineet Subramani, learned counsel appearing for the appellants in O.S.A.No.198 of 2023 would further argue that several rules relating to suspension of the Diocesan Council have been grossly violated by the Synod Members with impunity and therefore the very elections held on 15.01.2023 and 16.01.2023 ought not to have been upheld by the learned Single Judge on the basis that these defects would not have any impact on the elections.

64. Mr.V.Prakash, learned Senior Counsel appearing for the appellants in O.S.A.Nos.31 and 32 of 2024 and the 1st respondent in the other appeals viz., Church of South India would argue that the parties must confine themselves to the pleadings and as per the pleadings in the suit in C.S.No.86 of 2022 the only grievance of the appellant is that there is no qualification fixed for the posts of Moderator and office bearers of the Synod and the entire plaint in the said suit proceeds on the basis of various criminal cases that were filed against the then Moderator Most Rev. Dharmaraj Rasalam. Apart from the above, no other grievance was made



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

out by the plaintiff in the said suit and therefore they cannot be heard to canvass the other issues relating to the defect in the composition of the Electoral College, suspension of the Diocesan Councils etc.,

65. Mr.V.Prakash, learned Senior Counsel would insist on the well settled proposition of law that parties cannot be allowed to travel beyond the pleadings and seek reliefs of injunction on matters which were not pleaded or matters which were not put in issue by them. According to the learned Senior Counsel, the reliefs prayed for in A.No.57 of 2023 is beyond the very scope of the suit in C.S.No.86 of 2022.

66. No doubt, the said submission of the learned Senior Counsel is very attractive, but, the earlier applications in the said suit seeking injunction were closed by this Court leaving it open to the plaintiffs to approach the Court in the event of necessity. Invoking the said leave granted, the present applications in A.Nos.54 to 57 of 2023 have been filed by the plaintiffs seeking various reliefs impugning the amendments that were carried out to the Constitution of Synod as well as the bye-laws



pending the suit.

WEB COPY

67. As rightly pointed out by Mr.Vineet Subramani, learned counsel appearing for the appellants, the plaintiff in a suit under Section 92 of the Code of Civil Procedure cannot be tied down to the pleadings. The learned counsel would point out that the very object of Section 92 is to provide a safeguard to the Trustees from being harassed by un-scrupulous litigants, who initiate unwanted litigations. But, once a suit praying for a larger relief of framing of a Scheme is initiated and is pending, the said suit would take within its sweep all subsequent developments dispensing with a necessity of initiation of fresh proceedings.

68. The learned counsel would draw our attention to the very language of the Section to contend that a suit under Sections 91 or 92 would stand on a different footing from other disputes between the parties to the litigation. That is the precise reason as to why the institution of a suit, according to the learned counsel, is required to be preceded by an application for leave and the Court is bound to satisfy itself as to whether



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

circumstances exist to permit the plaintiff to launch the suit.

WEB COPY

69. Drawing our attention to the conclusions of the Hon'ble Supreme Court in *Shiromani Gurdwra Parbandhak Committee Vs. Mahant Harnam Sing C. and others* reported in *2003 (11) SCC 377* and *R.Venugopala Naidu and others Vs. Venkatarayulu Naidu Charities and others* reported in *AIR 1990 SC 444*, the learned counsel would contend that a suit under Section 92 is a suit for vindication of public rights and therefore it is deemed to be a suit for and on behalf of the entire body of persons who are interested in the Trust.

70. Once it becomes a suit for and on behalf of a body of persons, tying down the plaintiffs to the pleadings in the suit would result in multiplicity of litigation, avoidance of which is a prime object of Section 92 of the Code of Civil Procedure. Once the conditions required under the provision are satisfied, then a Court sitting under Section 92 is entitled to take into account all subsequent events which may occur to mould the relief, both interlocutory as well as final, in order to protect the interest of the



Trust and the beneficiaries.

WEB COPY

71. We find that the very nature of the suit under Section 92 allows the Court which is seized of the matter to examine all subsequent events as well as the other matters which are brought to its notice and to find out whether the affairs of the Trust are being carried on in a proper manner with the object of the Trust in mind.

72. We therefore do not think that we could entertain the contention of Mr.V.Prakash, learned Senior Counsel that the plaintiffs in C.S.No.86 of 2022 must be tied down to the pleadings and they should not be allowed to raise any other issue. In fact that the learned Judge himself has gone into the questions and has negatived the reliefs only on the ground that the results of the election will not be impacted by the irregularities and a plea that the plaintiffs should not be allowed to travel beyond the pleadings in the original suit has not been entertained by the learned Judge also. We therefore sitting in appeal have a duty to examine as to whether the need arises for us to interfere with the functions of the Trust.



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

73. Yet another plea is raised stating that the Church of South India by itself is not a Trust and therefore a suit under Section 92 is not maintainable. The said argument can straight away be rejected on the ground that the order granting leave to institute a suit under Section 92 has become final.

74. One another factor which has to be taken note of is that we have while disposing of the O.S.A.No.69 of 2022 have found that the meeting of the Synod that was held on 7th and 8th of March 2022 which approved the amendments to the Constitution and the bye-laws was not properly convened, since there was no decision taken at the meeting of the Executive Committee of the Synod held on 12.01.2022 authorizing a Special meeting of the Synod on 7th and 8th of March 2022. Therefore, the amendments that were carried out to the bye-laws also become defective.

75. We should also deal with the yet another contention of



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

Mr.V.Prakash, learned Senior Counsel that even if it is the suit under Section 92 the Church of South India being an unregistered body of individuals can be sued only after taking permission under Section 92. Once a leave is granted under Section 92, the suit becomes a suit filed by the body of persons who are interested in the affairs of the Trust. Therefore, the suit in C.S.No.86 of 2022 is a suit filed by and on behalf of every baptised members of the Church of South India against the office bearers and therefore to contend that Order I Rule 8 permission should be obtained to sue Church of South India even under Section 92 cannot at all be accepted.

76. We should point out that the Division Bench of the Bombay High Court as early as on 26th November 1940 in ***Bapugouda Yadgouda Patil and others Vs. Vinayak Sadashiv Kulkarni and others*** reported in ***AIR 1941 Bombay 317*** held that a procedure under Order I Rule 8 need not be extended to suits under Section 92, as the suits under Section 92 are essentially deemed to be the suits by and on behalf of the beneficiaries of the Trust.



WEB COPY

77. Reliance is also placed on the judgment of the Single Judge of this Court in *N.Anandan Vs. Ayyanna Gounder and others* reported in **1993 (2) MLJ 493**, wherein, a distinction in the language between Section 92 and Order I Rule 8 was considered and it was held that grant of leave under Order I Rule 8 is not a condition precedent as in the case of Section 92 and therefore, while permission to sue under Order I Rule 8 can be obtained at any time, grant of leave under Section 92 is a pre-condition for initiation of the suit itself.

78. Finally it was concluded that permission under Order I Rule 8 can be obtained at any stage of a suit even after initiation of the suit. We are therefore not inclined to accept the submission of Mr.V.Prakash, learned Senior Counsel that the fact that the permission under Order 1 Rule 8 has not been obtained by the plaintiff in C.S.No.86 of 2022 is fatal to the said suit. We are therefore of the view that the learned Single Judge was not right in concluding that the elections of the other office bearers cannot be said to be vitiated on the basis of the results. Once it is found that the



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

Electoral College was defective and the process of amendment of the bye-laws has not been carried out in accordance with the procedure prescribed in the Constitution of the Church of South India, the sequitur should be that the elections will stand vitiated. We cannot therefore allow the office bearers who are elected in such a vitiated election to continue in office.

79. We are therefore satisfied that Administrators should be appointed to conduct the elections of the Church of South India Synod. The learned Single Judge has already appointed the Hon'ble Mr.Justice V.Bharadidasan to conduct the elections for the post of Moderator alone. Considering the nature of the work and the time that is to be spent in administration, we find that a Committee of Administrators would be in a position to administer the affairs of the Church of South India more effectively than an individual. We therefore appoint Hon'ble Mr.Justice R.Balasubramanian and Hon'ble Mr.Justice V.Bharathidasan retired Judges of this Court as Administrators who will take immediate charge of the administration of the Church of South India as well as the Trust Association and administer the same till such time the elections of the Diocesan



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

Councils are completed.

WEB COPY

80. The Administrators named above are at liberty to appoint any other retired District Judge or judges to assist them in the process. The Church of South India Synod will pay a sum of Rs.10,00,000/- each as initial remuneration to the administrators and if any retired District Judge is nominated by the Administrators, they will be paid a sum of Rs.3,00,000/- each as initial remuneration.

81. Once the elections of the Diocesan Councils are completed the Diocesan Councils will nominate representatives to the Synod as per the Constitution of the Church of South India and the Administrators will conduct the elections of the Synod to elect new office bearers as per the un-amended Constitution and the bye-laws.

82. This leaves us with the appeals filed by the plaintiffs in C.S.No.7 of 2023 viz., O.S.A.Nos.188, 190 and 192 of 2023. In all three applications were filed in the said suit viz., O.A.Nos.21, 22 of 2023 and A.No.190 of



2023, wherein, the prayers are as follows:-

WEB COPY

Prayer in O.A.No.21 of 2023 in C.S.No.7 of 2023: *This original application has been filed under Order 14 Rule 8 of OS Rules r/w. Order 39 Rules 1 & 2 CPC praying to grant an order of interim injunction restraining the respondents/ defendants 2 to 5 and their men and agents from proceeding with any meeting of Church of South India Synod council or any other meeting for the election of Church of South India Synod Council and office bearers, for the forthcoming triennium 2023-2025 on the basis of the impugned notification dated 27.12.2022 or otherwise, pending disposal of the above suit.*

Prayer in O.A.No.22 of 2023 in C.S.No.7 of 2023: *This original application has been filed under Order 14 Rule 8 of OS Rules r/w. Order 39 Rules 1 & 2 CPC praying to grant an order of interim injunction restraining the respondents/ defendants and their men and agents from in any manner amending the Constitution/ Byelaws of the 1st respondent/ defendant or implementing any amendments claimed to have been passed in the Special Synod council meeting dated 7.3.2022 in Tiruchirapalli or the impugned notification dated 27.12.2022, pending disposal of the above suit.*

Prayer in A.No.190 of 2023 in C.S.No.7 of 2023: *This application has been filed under Order 14 Rule 8 of OS Rules*



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

r/w. Section 151 CPC praying to appoint a former judge/s of this Court as interim administrator(s) for framing guidelines and for good administration and managing the affairs of the 1st respondent/ defendant and for enquiring into all pending disputes affecting or relating to the electoral college of Church of South India Synod and the constituent dioceses of the 1st respondent/ defendant and to streamline the electoral college and thereafter conduct the election for the CSI Synod council for the triennium 2023-2025 strictly in accordance with the Constitution of the 1st respondent/ defendant, pending disposal of the above suit.

83. Though the learned Single Judge has found a *prima facie* case in the contentions of the plaintiffs in the said suit, no orders have been passed on the applications, inasmuch as the applications filed under Order I Rule 8 of the Code of Civil Procedure has not been ordered. The fact that an application under Order I Rule 8 was pending on the date when the learned Single Judge disposed of the above three applications is not in dispute. The non-grant of leave under Order I Rule 8 is projected by Mr.V.Prakash, learned Senior Counsel, as an obstacle or as a ground for rejecting interim



relief in the said suit.

WEB COPY

84. Reliance is placed by Mr.V.Prakash, learned Senior Counsel on the judgment of a Single Judge of this Court in ***Rev. Noble Gambeeran and others Vs. Peter P. Ponnann*** reported in ***1999 (1) LW 300***, where the Hon'ble Judge observed that the interim orders cannot be granted in a suit before permission under Order I Rule 8 of the Code of Civil Procedure is granted. This judgment of the learned Single Judge though rendered in 1999 runs counter to the judgment of the Division Bench of this Court in ***N.Anandan Vs. Ayyanna Gounder and others*** reported in ***1993 (2) MLJ 533***, which confirms the decision of the learned Single Judge in ***N.Anandan Vs. Ayyanna Gounder and others*** reported in ***1993 (2) MLJ 493***, wherein, it has been held that permission under Order I Rule 8 is not a pre-condition unlike leave under Section 92 of the Code. In deciding the contention that what applies to a suit in a representative capacity seeking permission under Order I Rule 8 of the Code of Civil Procedure does not apply to the suit filed under Section 92 of the Code of Civil Procedure, the Division Bench had this to say:



WEB COPY

7. *We may also consider the contention urged by the learned counsel for the appellant that as the grant of leave in condition precedent for instituting the suit, there is no scope for holding that the leave must be deemed to have been granted, as long as such a leave is not granted. Learned counsel further submitted that what applies to a suit in a representative capacity seeking permission under O. 1 R. 8, Code of Civil Procedure, does not apply to the suit filed under S. 92, Code of Civil Procedure, because the provisions contained in O. 1, R. 8 and S. 92, Code of Civil Procedure, 1908 are not similarly worded. Of course, as far as the proposition is concerned that permission must be deemed to have been granted in a suit filed in a representative capacity, once the notice is issued in the suit by the Court and further actions are taken therein, it is covered by a Division Bench decision of this Court in Sankiam and two Others v. Vadakasi and Others (1980 T.L.N.J. 86). The Division Bench of this Court has in the aforesaid decision held:*

“However, it is not necessary that a formal order should be passed by the Court. From the circumstances of the case and from the fact that the Court had ordered publication of the notice it can be presumed that the Court had granted the necessary permission under Order 1, Rule 8.”

The Supreme Court had an occasion to consider as to



whether the suit filed under S. 92, Code of Civil Procedure, 1908 could attract the principles that would attract the suit filed in a representative capacity in Venugopal Naiduv.Venkatarayalu Naidu Charities (AIR 1990 SC 444). The question that arose for consideration in that case was as to whether “parties” mentioned in Clause 14 of the scheme decree reproduced meant only the named plaintiffs and defendants in the cause title and their successors-in-interest or the suit being filed in a representative capacity it included all those who were interested in the suit. It was held that it included all those who are interested in the suit and therefore, even though some of them are not made parties, they are bound by the earlier decision and therefore, the Explanation IV to S. 11, Code of Civil Procedure, 1908 is attracted to a subsequent suit filed by them. Thus, the Supreme Court in Principle recognised that the suit filed under S. 92, Code of Civil Procedure, in substance is a representative suit, though the procedure that has to be followed for filing the suit is not the same. Of course, we may add here that the procedure that has to be followed in instituting both the suits is not the one and the same as seen from the provisions in the Code of Civil Procedure. One is covered by the provisions contained in Order 1. Rule, 3 and the other by the provisions contained in S. 92, Code of Civil Procedure. But, in our view, it should not



WEB COPY



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

make any difference for the purpose of finding out as to whether the leave is deemed to have been granted. Therefore, we are of the view that in the facts and circumstances of the case, leave must be deemed to have been granted on the date when A.A.Os. 514 and 515 of 1992 were decided, viz., 6th August 1992.

85. Once it is held that permission to sue under Order I Rule 8 can be obtained at any point of time and it is not a pre-condition. It automatically follows that the Court's power to grant interim orders, even before granting permission under Order I Rule 8, cannot be curtailed. Therefore, we are unable to agree with the conclusion of the learned Single Judge in ***Rev. Noble Gambeeran and others Vs. Peter P. Ponnann*** reported in ***1999 (1) LW 300***, where the learned Judge concludes that a Court seized of a suit in which permission under Order I Rule 8 is required, cannot grant an interim order without granting such leave.

86. Even otherwise, in the case on hand, the application for leave was pending on the date when the learned Single Judge refused relief to the



plaintiffs in C.S.No.7 of 2023 on the ground that the application has not been ordered. The procedure that is to be followed by a Court under Order I Rule 8 has been spelt out in several pronouncement. However let us examine the provisions under Order I Rule 8 to enable us to understand the scope of the proceedings on first principles. Rule 8 of Order I of the Code of Civil Procedure, 1908 reads as follows:-

8. One person may sue or defend on behalf of all in same interest.

(1)Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other



WEB COPY



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of [Order XXIII](#), and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

***Explanation** - For the purpose of determining whether the persons who sue or are sued, or defend, have the same*



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

WEB COPY

interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whom behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

87. A plain reading of the above said provision shows that it is an enabling provision, which is intended to avoid multiplicity of proceedings. While sub-Rule (1) of Rule 8 enables one or more of persons having same interest in a suit to sue or to defend such suit on behalf of or for the benefit of all persons so interested with a permission of the Court. The Court can also direct one or more of such persons to sue or defend such suit for the benefit of all persons so interested.

88. While Clause (a) of sub-Rule (1) of Rule 8 invest the option of suing or being sued with the parties to the litigant; clause (b) of sub-Rule (1) of Rule 8 invests discretion with the Court to direct such suing. Sub-Rule (2) provides that the Court shall cause publication of such suit having



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

been filed where permission is sought for to sue through representatives or to be sued through representatives.

89. The publication is only a method by which the persons interested are informed of such a suit having been instituted to enable them to participate in the proceedings if they deem it fit or necessary. A suit without permission under Order I Rule 8 is not a nullity. Once permission is granted under Order I Rule 8, the decision in the suit would be binding on the entire body of persons, who are represented by the individuals or parties to the suit. If no permission is granted, the decision will be binding only on the parties to the suit.

90. If we are to examine the consequence of absence of permission in the light of what we had stated above, we will have to necessarily conclude that the power of the Court to pass interim orders cannot be said to be dependent on the permission being granted under Order I Rule 8.

91. Once it is held that permission can be obtained at any stage of the



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

proceedings [see **1993 (2) MLJ 493 and 533**], the non-grant of permission being a curable defect cannot be construed as a stumbling block to grant the reliefs if circumstances justify. We therefore do not think that the learned Single Judge was right in not passing any orders in the applications filed in C.S.No.7 of 2022 and closing the applications with liberty to the plaintiffs to seek the reliefs after obtaining leave.

92. We would therefore allow these appeals only to the limited extent that these applications will also stand disposed of in terms of the orders passed by us in O.S.A.No.198 of 2023. In view of the fact that we have appointed Administering Committee, the applications seeking interim injunctions do not survive, they are therefore closed.

93. In fine, the **O.S.A.No.198 and 188, 190 and 192 of 2023** will stand **allowed**. The Committee of Administrators appointed by us will immediately take over the administration of both the Church of South India and the Trust Association. We however do not want the Administrators to continue till the disposal of the suit under Section 92. We would therefore



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

request Administrating Committee to ensure that the elections for all the Diocesan Councils are conducted and representatives of the Synod are also elected by the respective Diocesan Councils and a special meeting of the Synod is convened at the earliest possible opportunity to elect new office bearers of the Synod.

94. The appeals will stand disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.)

(R.SAKTHIVEL, J.)

12.04.2024

dsa

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking order



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

Copy To

WEB COPY

- 1.The Hon'ble Mr.Justice R.Balasubramanian,
No.5, Tiger Varadachari 1st Road,
Kalakshetra Colony, Besant Nagar,
Chennai – 600 090.
- 2.The Hon'ble Mr.Justice V.Bharathidasan,
New No.22, Old No.L-45, 2nd Main Road,
Kamaraj Nagar West, Thiruvanmiyur,
Chennai – 600 041.

Note:-

Registry is directed to dispatch the copy immediately.

Issue order copy on 17.04.2024.



WEB COPY



O.S.A.Nos.198,188, 190, 192, 236 to 238/2023 and 31 & 32 /2023

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

dsa

**O.S.A.Nos.198, 188, 190, 192 &
236 to 238 of 2023, 31 & 32 of 2024**

12.04.2024