



W.P(MD)No.4367 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4367 of 2024

and

W.M.P.(MD)Nos.4193 and 4194 of 2024

D.David

... Petitioner

Vs.

- 1.The Registrar,
The Registrar of Companies,
Block No.6B, Wing 2nd Floor,
Shastri Bhawan, 26,Haddows Road,
Chennai - 600 034.
- 2.The Bishop,
Church of South India Kanyakumari Dioceses,
CSI Diocesan Office, No.71A, Dennis Street,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.
- 3.The Church Pastor/Presbyter,
Muttaikaadu Pastorate Church,
Church of South India Kanyakumari Dioceses,
Muttaikaadu, Kalkulam Taluk,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letters issued by the 2nd respondent in



W.P(MD)No.4367 of 2024

Ref. No.B/0275/2024 dated 19.02.2024 and the consequential impugned letter issued by the 3rd respondent in Ref. No.02-A/2024/CSI Muttaiacadu/2024 dated 21.02.2024, quash the same, and consequently direct the 1st respondent to direct the 2nd and 3rd respondents to adhere to the Constitution of CSI Kanyakumari Diocese.

For Petitioner : Mr.T.Cibichakraborty

For Respondents : Mr.F.Deepak,
Standing Counsel for R2 & R3.

ORDER

Heard both sides.

2.The writ petitioner is a member of the Church of South India. He is a practising Christian. The deacon election for the triennium 2024 – 2027 was held on 18.02.2024. The petitioner contested in the said election and was successful. Subsequently, the second respondent disqualified the petitioner by citing a relevant provision in the Constitution and Rules of Church of South India Kanyakumari Diocese. Challenging the same, the present writ petition came to be filed.



W.P(MD)No.4367 of 2024

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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and grant relief as prayed for.

4.The learned standing counsel for the respondents 2 and 3 pointed out that the petitioner had already filed O.S.No.19 of 2024 on the file of the Principal District Munsif Court, Padmanabapuram for the very same relief and that therefore, this writ petition is not maintainable. His objection is that the petitioner cannot be allowed to ride two horses. He also would challenge the very maintainability of the writ petition. The respondents 2 and 3 filed counter affidavit and the core stand taken therein is that the petitioner as a member of CSI cannot be allowed to question the Rules set out in the constitution. The CSI Constitution attaches highest sanctity to the institution of marriage and since admittedly the petitioner is a divorcee, he has to necessarily suffer disqualification. The mere fact that the petitioner had remarried and was subsequently elected on quite a few occasions cannot in any way help the petitioner to escape from the rigor of the rule. The learned standing counsel for CSI pressed for dismissal of the writ petition.



W.P(MD)No.4367 of 2024

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5.I carefully considered the rival contentions and went through the materials on record. It is true that the petitioner had earlier filed O.S.No.19 of 2024 on the file of Principal District Munsif Court, Padmanabapuram. The petitioner had challenged the stand of the first defendant therein disqualifying the petitioner from standing in the deacon election. But the petitioner was allowed to stand in the election subsequently and therefore, nothing survived for adjudication in the said suit. Besides, the said suit has since been withdrawn.

6.My attention is drawn to the decision of the Hon'ble Supreme Court reported **2004 (7) SCC 166 (M/s.S.J.S.Business Enterprises (P) Ltd. Vs. State of Bihar)**. In the said decision, before the Hon'ble Supreme Court, objection was taken that in respect of the very same cause of action, the petitioner had filed civil suit. The Hon'ble Supreme Court permitted the petitioner to pursue the writ remedy after recording his undertaking that he will withdraw the suit. In this case also, the cause of action is founded on the stand taken by the Bishop. Even though the subject matter of the suit as well as the writ petition might be one and the same, since the petitioner has withdrawn the suit, there cannot be any objection for pursuing the writ remedy. I, therefore, do not find



W.P(MD)No.4367 of 2024

any merit in the preliminary objection raised by the learned standing counsel for CSI.

7.It is also contended that a writ petition will not lie against the challenge of the Church of South India in respect of deacon election. This issue is no longer *res integra*. The Hon'ble Full Bench of the Madras High Court in the decision rendered on **29.02.2024** in ***W.P.No.30472 of 2022(D.Bright Joseph V. Church of South India(CSI) and others)*** had held as follows:-

24. To summarize the issue now in reference, it can be stated that:

(i) the respondents 1 and 2 are running 2300 schools, 150 colleges and 104 hospitals in India. Therefore, the public duty that they discharge falls within the contours of Article 21 and 21A of the Constitution of India.

(ii) The Courts have emphasized that educational institutions which nurture and develop young minds should ensure quality education and high standards of integrity to the persons passing through their institutes. Therefore, persons administering and managing these institutions should be above board.

(iii) Since the educational institutions run by respondents 1 and 2, both aided as well as unaided, are bound by statutory regulations of varying degrees, they are amenable to the writ jurisdiction. Any act of the management who are in administration of these institutes / hospitals likely to bring down the standards of both education as well as medical services can be challenged by any person invoking the rights under Article 226 and in that sense, respondents 1 and 2 would



W.P(MD)No.4367 of 2024

fall within the category of any person or authority as described under Article 226 of the Constitution of India.

(iv) The educational agency of the institutions run by the first respondent is the Synod and the Constitution of the Synod has a direct impact on the quality and standards of the educational institutions/hospitals. Therefore, any act impairing / impacting the process of electing the Synod would have a direct impact on the quality and standard of these institutions/hospitals.

(v) Apart from running educational institutions, respondents 1 and 2 are also maintaining churches and discharging functions of the clergy. These functions are outside the scope of judicial review under Article 226 of the Constitution of India.

(vi) A person aggrieved by the acts of respondents 1 and 2 relating to the above can definitely move this Court under Article 226 of the Constitution of India to ensure the due compliance of this public duty.”

8.The petitioner has been functioning as correspondent of one of the aided educational institutions run by CSI. In fact, only because of he being an elected member of diocesan council, he could be nominated as the correspondent. Therefore, the petitioner's right to stand for deacon election is linked to his right to be re-nominated as correspondent of the educational institution. Respectfully applying the ratio laid down by the Hon'ble Full Bench, I hold that this writ petition is maintainable.



W.P(MD)No.4367 of 2024

9. Now coming into the merits of the matter, the relevant rule in the Constitution of the C.S.I. Kanyakumari Diocese. Part II, Rules, Section X (8) reads as follows:-

“X. Discipline

8. Both the parties in a divorce shall lose the right to be elected in a Committee, Board or Council under the Diocese nor such persons be nominated or appointed in any of the Governing Bodies under the Diocese.”

10. It is true that the petitioner's marriage with one Florence Jebala was solemnized on 15.09.2000. It was dissolved by the District Judge, Kanyakumari at Nagercoil vide decree dated 22.10.2003 in I.D.O.P.No.80 of 2003. Subsequently, the petitioner got remarried under aegis of CSI Kanyakumari Diocese on 27.08.2008 to one Sudha Mini. Through the said marriage, the petitioner also had begotten three children. All of them were baptized by Muttaikaadu Pastorate Church, Kanyakumari District. Interestingly, the petitioner has been contesting the church elections successfully since 2010.

11. The question that calls for consideration is whether the petitioner would attract the aforesaid disqualification rule because the marriage between



W.P(MD)No.4367 of 2024

him and Florence Jebala was dissolved and the decree of divorce was granted.

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12.The expression employed in the aforesaid rule is “parties in a divorce”. It is true that any disqualification rule will have to be construed narrowly and strictly. I am aware that there is a concept known as eternal damnation in Christian theology. But the concept can kick in only after one passes away. During one's life time, there should not be any eternal damnation. I, therefore, construe the said rule as a meaning that so long as divorce proceedings are pending, the parties to the proceeding cannot contest for any church election. If this construction is not placed, even a party who is innocent can also be permanently disqualified. Such construction would be monstrous and inequitable. Construction that leads to monstrous and inequitable results should be avoided.

13. The Constitution of the CSI Kanyakumari Diocese was framed in the year 1960. Of course, amendments were made from time to time. Clause 7 dealing with discipline of civil marriage states as follows:-

“ All those who conduct marriages outside the provisions made in this Constitution shall be outside the fellowship of the Church until such time they have the marriage rite done



W.P(MD)No.4367 of 2024

according to the Church rules.”

In other words, the disqualification of being excluded from the fellowship of the Church will cease the moment the marriage rite is done as per the Church Rules. This is the position even if the marriage was earlier solemnized outside the provisions made in the Constitution. A similar approach deserves to be adopted in the case of Clause 8 also. The expression “widow” will not apply to a person who has remarried. Likewise, the tag of divorcee will not attach to a person who has remarried. Only if the divorcee continues to remain single, the disqualification can hold good. Even in Hindu Shastras, a person can perform Yagna only if he is accompanied by his wife. In Ramayana, after the great war was over, when Lord Rama performed Ashwamedha Yagna, he sat before the ritual fire accompanied by a golden statue of Sita. I can understand the importance attached to the institution of marriage in theology. But the case on hand pertains to elections. Right to found family and getting married is a human right. Right to divorce is a statutory right. The procedure to obtain divorce is statutorily regulated. Divorce can be obtained among Christians and Hindus either by mutual consent or by establishing marital misconduct. One cannot incur disqualification for exercising one's statutory right. If the aforesaid provision in the CSI Constitution is literally applied, it will lead to monstrous results. That is why, I hold that the aforesaid rule will not apply in the case of a



W.P(MD)No.4367 of 2024

person whose marriage has been solemnized under the Constitution of the CSI Kanyakumari Diocese after the first divorce. In other words, once the very same church had solemnized the remarriage, the disqualification rule can no longer operate. I therefore hold that the impugned communication issued by the second respondent is not in consonance with the Constitution of the C.S.I. Kanyakumari Diocese.

14. I of course refrain from invoking the principle of desuetude. The said concept is applied when a provision loses its force even without express repeal. That is on account of disuse. Probably, that was why, the provision was not invoked against the petitioner on earlier occasions. The Rev. Bishop appears to have suddenly remembered it. The Indian Divorce Act underwent drastic amendments right from 2001 onwards. Section 10-A was introduced on 03.10.2001 providing for dissolution of marriage by mutual consent. Grounds that were earlier unavailable were also introduced in the statute. In these circumstances, the aforesaid disqualification provision has become utterly obsolescent. The Constitution itself was framed several decades ago and it is time, the aforesaid disqualification clause is revisited in the light of the subsequent statutory amendments made to the marriages laws. The bylaws of a body must be in consonance with the overall legal framework of the society. I



W.P(MD)No.4367 of 2024

make this observation more in passing and it does not constitute the central reasoning of this order.

15.In this view of the matter, the impugned communication is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias / pmu

To:-

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W.P(MD)No.4367 of 2024

G.R.SWAMINATHAN, J.

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W.P(MD)No.4367 of 2024

18.03.2024