



W.P(MD)No.14713 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.14713 of 2024

and

W.M.P(MD)No.12908 of 2024

N.James

... Petitioner

Vs

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



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5.M.P.Jeyasekhar,
Secretary,
Thottavaram Pastorate Church,
Church of South India Kanyakumari Diocese,
Moovattumugam, Tiruvattar Taluk,
Kanyakumari District.

... Respondents

**(R - 5 is impleaded vide order dated 03.12.2024
made in W.M.P(MD)No.22367 of 2024)**

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents to declare the deacon election of the third respondent Church conducted for the triennium 2024-2027 on 18.02.2024 as void and to consequently direct the third respondent to conduct a fresh deacon election for the third respondent Church within a time stipulated by this Court.

For Petitioner	: Mr.T.Cibi Chakraborty
For R – 1	: Mr.K.R.Laxman
For RR 2 & 3	: Mr.F.Deepak
For R – 5	: Mr.T.Lajapathi Roy for Mr.Xavier Rajini

ORDER

This Writ Petition has been filed by the petitioner for a direction directing the respondents to declare the deacon election of the third respondent Church conducted for the triennium period 2024-2027 dated 18.02.2024 as void.



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2.The petitioner is a member of the Church of South India situated at Thottavaram, Thiruvattar Taluk, Kanyakumari District. The CSI Kanyakumari Diocese is one among the several dioceses of the parental body of the Church of South India. The third respondent is one among the several pastorate Churches governed and administered by CSI Kanyakumari Diocese. There are one Pastor and 8 Deacons. There are 187 members who are eligible to vote in the Deacons election. The second respondent notified the election for the Church Deacon for the triennium period 2024-2027 to elect the Deacon by-election on 18.02.2024. The petitioner participated in the election and secured 79 votes. The fifth respondent also contested the election and he got elected as the Secretary of the third respondent. The petitioner challenged the election on the ground that one Jacob holding a membership in CSI Good Shepherd, Velachery and also membership of the third respondent. He had dual membership in two Churches thereby violating the provisions of the Constitution of CSI Kanyakumari Diocese and voted in the election of the third respondent. As per Part-I, Chapter II under Section 13.2 of the Constitution of C.S.I Kanyakumari Diocese, any person being a member of one Church should not hold another membership in another Church under the Church of South India. Therefore, it is purely an election dispute.



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3.The learned counsel appearing for the fifth respondent raised preliminary objections as to whether the Writ Petition is maintainable or not challenging the election conducted by the third respondent.

4.The learned counsel appearing for the petitioner relied upon the Judgment passed by the Hon'ble Full Bench of this Court reported in **2024 (2) CTC 369** in the case of ***D.Bright Joseph Vs. Church of South India (CSI), Synod Secretariat***, wherein it is 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.



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(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 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.'

5.Thus, it is clear that if the Church is discharging the public function and if any action taken by them is detrimental to the discharge of duty, a Writ Petition is maintainable such as Educational



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Institutions. When the Church of South India is 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.

6.In the case on hand, admittedly, the election itself is under challenge on the ground that one Jacob has dual membership in two Churches and he was permitted to vote and elected the fifth respondent herein as the Secretary of the third respondent. That apart, the petitioner already filed a suit in O.S.No.60 of 2024 before the Additional District Munsif Court, Padmanabhapuram seeking for declaration declaring that the election conducted on 18.02.2024 for the Triennium period 2024-2027 as null and void. While pending the said suit, the petitioner filed this Writ Petition. Thereafter, the said suit was withdrawn on 05.08.2024. Initially, the suit was filed on 18.06.2024 and while pending the suit, the present Writ Petition was filed on 27.06.2024. Subsequently, on 05.08.2024 the said suit was withdrawn by the petitioner without seeking any liberty as contemplated under Order 23 Rule 1(3) of C.P.C.



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7.Further, it is a disputed question of facts and as such it cannot be resolved in the Writ Petition under Article 226 of the Constitution of India. It is relevant to extract the provision under Order XXIII Rule 1(3) of C.P.C hereunder:

'ORDER XXIII Withdrawal and Adjustment of Suits

1(3) Where the Court is satisfied,—

*(a) that a suit must fail by reason of some formal defect, or
(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, it may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.'*

8.Therefore, the petitioner ought to have obtained liberty to institute a fresh suit for the very same subject matter. Further, when the suit was very much pending, the petitioner could not maintain this Writ Petition for the very same relief. Though subsequently, the said suit was dismissed as withdrawn, the petitioner failed to seek any liberty as contemplated under order XXIII Rule 1(3) of C.P.C. Therefore, this Writ Petition is not maintainable and the same is liable to be dismissed. Accordingly, this Writ Petition is dismissed. However, the petitioner is at liberty to



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challenge the election, in accordance with law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**03.12.2024
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NCC : Yes / No
Index : Yes / No
Internet : Yes
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Order made in
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