

(2007) 06 MAD CK 0046

In the Madras High Court

Case No : O.S.A. No's. 115 to 118 of 2007

N. Benjamin Franklin, Member, Immanuel Lutheran Church,
Y. Tamilselvan, Navalkaddu Luthern Church and Rev. C.H.
Alfred Pastor, Calvary Lutheran Church

APPELLANT

Vs

India Evangelical Lutheran Church and Others

RESPONDENT

Date of Decision : 09-06-2007

Acts Referred:

Citation : (2007) 06 MAD CK 0046

Hon'ble Judges : A.P. Shah, C.J;P. Jyothimani, J

Bench : Division Bench

Advocate : R. Thiagarajan, for the Appellant; P. Selvaraj, for R.1 and S.V. Durai Solaimalai, for R.5, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The above appeals are directed against the order of the learned single Judge dated 23.04.2007 made in O.A. No. 355 to

358 of 2007 in C.S. No. 260 of 2007, filed by the plaintiffs praying for a decree of mandatory injunction, directing the first defendant, viz., India

Evangelical Lutheran Church (in short, "I.E.L.C."), to hold the Election through the Election Commissioner of I.E.L.C., for all the Circles, three

Synods, viz., Ambur, Nagercoil and Trivandrum and Apex Body, viz., I.E.L.C. in accordance with the Constitution and Bye-laws of the Synods

and Apex Body, by appointing a retired Judge of this Court as Election Officer; for declaration that the 5th defendant in the suit having been

disqualified as Election Commissioner and therefore, holding the post as illegal; for permanent injunction against the 5th defendant from holding

various posts, for mandatory injunction directing the first respondent to levy the

assessment payable by the respective Churches as per the

Constitution and Bye-laws of Synods and I.E.L.C. and effect assessment and collection, etc.

2. Pending suit, the above said interim applications, viz., O.A. Nos. 355 to 358 of 2007 have been filed, for mandatory injunction, directing the

first defendant to hold elections for all Circles, three Synods and Apex Body; interim injunction against the 5th defendant from holding the office;

interim injunction directing the first defendant to levy the assessment payable by the respective Churches and interim injunction against the first

defendant from holding elections through the 5th defendant. While disposing of the said applications, the learned single Judge has passed the

following order.

a) Justice A.K. Rajan (retired) is appointed in this place of Justice J. Kanakaraj, on the same terms and conditions subject to which Justice J.

Kanakaraj was appointed by the Division Bench of this Court.

b) Justice A.K. Rajan, with the assistance of associate member Mr. M.S. Palanisamy shall hold elections to Synods as well as to the post of

President of IELC in accordance with the directions issued by the Division Bench of this Court and confirmed by the Supreme Court in Civil

Appeal in C.A. Nos. 4122 to 4124 of 2006.

c) With regard to the quantum of assessment to be paid by the member churches, the administrators shall be entitled to decide the issue.

d) With regard to the Circle Elections already conducted in pursuance of the orders passed by the Division Bench, it is open to the appellants as

well as the respondents 2 to 4 to seek suitable directions or modifications from the Division Bench.

(e) The fifth respondent who has issued the election notification as the Election Commissioner shall be entitled to perform ministerial function as

directed by the administrators.

3. While it is admitted that as far as Circle elections are concerned, they are already conducted, the main grievance of the appellants is that the

election in respect of the Circles, synods and for the post of President of I.E.L.C. can be conducted only after the quantum of assessment to be

paid by the members of the Churches are ascertained. Therefore, according to the learned Counsel for the appellants, the order of the learned

single Judge means that the quantum of assessment to be paid by the member Churches can be ascertained after the elections are completed,

which according to him is against the direction of the Supreme Court in Civil Appeal Nos. 4122 to 4124 of 2006 (Nelson and Anr. v. Kallayam

Pastorate and Ors.). A reading of the portion of the judgement of the Apex Court makes it clear that the elected members in respect of Ambur

Synod and Church Council can take over their respective activities from the Administrators and the Administrators shall however continue to

oversee the functions of the Church Council and Ambur synod, and the elections in respect of Nagercoil Synod would be conducted under the

supervision of the learned Administrators, directing the learned Administrators to see that the elections of the two Synods are held as expeditiously

as possible.

4. It is seen that Justice A.K. Rajan (Retired), the learned Administrator in his report has found that as per the complaints received from all the

three Synods, the expenditure incurred by them for construction of Churches etc., and the salary to the Paster are more than the assessment and

therefore, they need not pay any assessment and in such circumstances the learned Administrator has taken a decision that this aspect can be

considered after the elections, when the question of payment of the balance of 50% of the assessment arises. Accordingly, the learned

Administrator in his report has stated,

6.04: Therefore, in order to ensure a wider participation in the election, the last date for payment is extended. One more chance is given to all the

Pastorates to pay the dues (as determined by the Church Council on 06.10.2006 the 50% of the assessment upto December, 2005) as condition

precedent to take part in the election to the Synod and I.E.L.C.

5. A further reference to the report of the Administrator clearly shows that earlier occasion the Division Bench of this Court has not interfered with

the direction of the Administrators as modified by the Church Council in relation to payment of 50% of the assessment amount as a condition

president to participate in the election.

6. It is now informed that the period of old office bearers comes to an end recently. It is made clear that till newly elected body of office bearers

take over the charge, the old body office bearers shall continue under the

supervision of the learned Administrators.

In view of the above said position, we are not inclined to interfere with the order passed by the learned single Judge and accordingly, we confirm

the order made in O.A. Nos. 355 to 358 of 2007 in C.S. No. 260 of 2007. In view of the same the appeals fail and the same are dismissed. No

costs. Consequently, connected miscellaneous petitions are also dismissed.