

(2019) 08 CAL CK 0162

In the Calcutta High Court

Case No : Adms. C. Appl Order (FMAT) No. 793 Of 2018, Civil Application (CAN) No. 8020 Of 2018 & Adms. C. Appl Order (FMAT) No. 793 Of 2019, Civil Application (CAN) No. 8020 Of 2019

Rt Reverend Ashoke Biswas

APPELLANT

Vs

Church Of North India

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0162

Hon'ble Judges : Sanjib Banerjee, J;Suvra Ghosh, J

Bench : Division Bench

Advocate : Sabyasachi Chowdhury, Debargha Basu, Pradeep Upadhyay, S.N. Mukherjee, Samrat Sen, Ajay Das

Final Decision : Disposed Of

Judgement

All is not well in the Church of North India; and, at a time when its flock may need greater protection, the Church is mired in squabbles among its highest authorities. This is an unsavory saga with a Bishop on one side and the Church on the other, where neither comes out the better.

The appellant questions the propriety of an order dated August 9, 2019 passed on the principal injunction petition in a suit by which the plaintiff-appellant seeks reinstatement as the Bishop of the diocese of Calcutta. The suit would have lost all meaning by August 19, 2019 since the appellant attains the age of 68 on that day.

In accordance with the rules of the Church, the appellant was to retire as the Bishop of the Calcutta diocese upon attaining 65 years of age in 2016. The relevant rules permit a Bishop to apply to the synod for an extension which the appellant duly applied for. The appellant was granted an extension for a year upon the recommendation of the synod being accepted by the executive committee of the synod, which appears to be the highest decision-making body

in the Church. The Moderator heads the synod.

The rules require the extension to be sought for a year each time and it is permissible for such extension to be sought till a Bishop reaches the age of 68. In 2017, the appellant sought a second extension and the appellant's case was recommended for approval by the synod. However, at the meeting of the executive committee of the synod held on August 2/3, 2017, the Moderator proposed that the age of superannuation of all Bishops should be extended to 68. The minutes of the 100th meeting of the executive committee held on such days, record that the Moderator addressed the executive committee and informed the members that the age of superannuation in like posts had been increased in other countries. He explained that the life expectancy in this country had increased considerably. As such, the Moderator made out a case for raising the age of superannuation of the Bishops, office-bearers and presbyters in CNI. The minutes reveal that the matter was discussed thoroughly "and in supercession of any other decision already taken in this regard, it was unanimously resolved that with immediate effect, the age of superannuation of CNI Bishops ... shall be Sixty Eight (68) years."

Indeed, the age of superannuation for office-bearers and chief functionaries of the synod and the age of superannuation for the presbyters also stood increased to 68 by the same resolution and such resolution, to repeat, was specific that it would take immediate effect.

It is also significant that though the second extension for the appellant was recommended by the synod to the executive committee, there was no specific resolution of the executive committee in such regard. In fact, upon the age of superannuation of Bishops being generally increased to 68, there was no further need for passing any specific resolution qua the appellant at the relevant meeting.

As a consequence of the relevant resolution at the 100th meeting of the executive committee taking immediate effect, there was no need for the appellant to apply afresh for an extension in the year 2018. The appellant did not make the unnecessary application. However, by a letter dated August 22, 2018, the appellant was informed that since the synod of CNI did not receive any request for the further extension of the tenure of the appellant, "his extended term expired on August 18, 2018." Such letter also informed, inter alia, the appellant herein that the appellant had been appointed as the Moderator's Episcopal Commissary to the diocese of Calcutta with effect from August 19, 2018 till the commission was revoked by the Moderator. It appears that on August 19, 2018 itself, the appellant signed a form accepting the commission as the Moderator's Episcopal Commissary.

Immediately upon receipt of the letter of August 22, 2018, in effect, removing the appellant from the post of Bishop of the diocese of Calcutta, the appellant protested the same. In the appellant's letter, also of August 22, 2018, he contended that in view of the resolution at the 100th meeting of the executive

committee of the synod in 2017, there was no question of the appellant seeking a further extension for the year 2018-19 since the age of superannuation stood extended to 68 with immediate effect upon such resolution being passed. It was also asserted by the appellant that there was no question of the appellant being seen to have retired from the post of Bishop and being appointed as a commissary since the age of retirement in both cases was the same. Other grounds were also taken, *inter alia*, to the effect that there was no question of any commissary being appointed without there being a vacancy in the office of the Bishop of a diocese.

The appellant contends that since the fundamental premise of the appellant's removal as the Bishop of Calcutta was flawed, the appellant should be deemed to be continuing in office till his superannuation on August 19, 2019. The injunction petition before the trial court was filed primarily for such purpose. In the meantime, however, there was first a Reverend Probal Dutta, who was appointed as the Bishop of Calcutta before he was replaced by Reverend Paritosh Canning, who continues in office and makes more headlines for the wrong reasons than this deposed Bishop.

The appellant asserts that the trial court went wrong in accepting the submission of the Church that the appellant had suppressed material facts or that the appellant had not approached the court with clean hands. The appellant was accused of suppressing the appellant's acceptance of his appointment on August 19, 2018 and the appellant was accused of suppressing a document of August 30, 2018 which the appellant says that the appellant received well after the suit was instituted on August 27, 2018. The appellant claims that by resorting to divers dilatory tactics, a year has been spent in the trial court such that the suit and the petition have been rendered almost meaningless by the time the injunction petition was decided by the trial court, barely 10 days before the appellant's tenure would have lawfully run out.

There is no doubt that the executive committee of the synod may have been misled and the letter of August 22, 2018 is flawed when it refers to the appellant's tenure coming to an end on the ground that the appellant did not apply for a fresh extension in 2018. There was no need for such application since the appellant's tenure stood extended till he reached the age of 68 by virtue of the resolution passed at the 100th meeting of the executive committee of the synod in 2017 and such resolution taking effect immediately.

However, there is a second part to the matter. As much as the appellant may have been dealt with harshly for the appellant not making a wholly unnecessary and superfluous application for extension, there can be no doubt that the synod or the Church otherwise had due authority to choose who would be the Bishop of the diocese of Calcutta and such part of the decision must be delinked from the earlier part by which the rules were misinterpreted to imply that the appellant had ceased to be the Bishop after August 19, 2018.

Ordinarily, in matters pertaining to private bodies or religious orders or clubs or the like, courts are slow to interfere in the process, particularly in the matter of appointment of office-bearers. Private bodies and the members thereof have unfettered rights to select or elect or choose who may represent them at what posts and unless compelling grounds are demonstrated, a court would scarcely interfere in such matters of internal management. It is evident that the appellant herein protested his virtual removal by his letter of August 22, 2018, but neither the Moderator nor the synod or its executive committee was swayed by the appellant's impassioned plea. The effect of the silence on the part of the Moderator and the synod, in the wake of the appellant's letter of August 22, 2018, is that neither the Moderator nor the synod wanted the appellant to continue any further as the Bishop of Calcutta. No reasons were given. No reasons were necessary. The appellant has not been accused of any misconduct or act of commission or omission. No stigma attaches to the appellant upon the appellant's removal from the post. However, it must be respected that despite the ultimate authority in the Church being made aware of the mistake as evident from the Church's letter of August 22, 2018, the relevant persons or the body chose not to correct the position. It is apparent that the Church and its highest body did not want the appellant to continue in the post. In such a scenario, a decree in the nature of specific performance or a mandatory injunction; whether at the interlocutory or final stage, to reinstall the appellant in the post would be an extraordinary order.

If the Church or its relevant body had indicated grounds that were not justified or it cast any aspersion on the appellant or his conduct in the office of Bishop of Calcutta, the court may have been more excited to look into the same. But when no allegation is levelled and no stigma attaches to the appellant, the tacit reiteration of the appellant's removal by the supreme body in the Church does not call for any interdiction.

For the reasons aforesaid, the judgment and order impugned dated August 9, 2019 do not call for any interference.

FMAT 793 of 2019 along with CAN 8020 of 2019 are disposed of as above, but without any order as to costs.