

(2014) 04 MAD CK 0263

In the Madras High Court

Case No : Writ Appeal (MD) No. 212 of 2014 and Writ Appeal (MD) No. 335 of 2014 and M.P. (MD) No. 1 of 2014 in W.A. (MD) No. 212/2014 and M.P. (MD) Nos. 1 & 2 of 2014 in W.A. (MD) No. 335/2014

S.D.K. Rajan and Rev. Devaraj Gnanasing

APPELLANT

Vs

Jeddiya Sathya @ Sathya and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2-A, 144
Constitution of India, 1950 — Article 226

Citation : (2014) 3 LW 108

Hon'ble Judges : V.M. Velumani, J;V. Ramasubramanian, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—Both these appeals challenge the restitution ordered by the learned Judge of this Court, while dismissing a writ petition in W.P. (MD) No. 10722 of 2013, by an order dated 22.01.2014.

2. We have heard Mr. S. Meenakshisundaram and Mrs. Lita Srinivasan, learned counsel appearing for the appellants, Mr. P. Pethu Rajesh, learned counsel appearing for the 1st respondent (who was the writ petitioner), Mr. N. Dilip Kumar, learned counsel appearing for the respondents 7 to 14, Mr. V. Lakshminarayanan, learned counsel appearing on behalf of Mr. J. Barathan, counsel for respondents 18 to 27 and Mr. S. Jeyasingh, learned counsel for the 17th respondent.

3. The brief facts, which have led to the filing of the writ appeals, can be summarised as follows:

(a) The Thoothukudi-Nazareth Diocese, which is part of the Church of South India, is an institution, which is administered by an Executive Committee at the highest level. This Executive Committee consists of one Secretary under the

Layman category, one Secretary from Clergymen, one Treasurer, one Vice-Chairman, two members from the Pastorate workers category and one member from the School Category.

(b) The Diocese has a very peculiar institutional set-up, which is in the form of pyramid. In the first layer of the pyramid (from the top) lies six Church Councils. In the second layer of the pyramid lies several Pastorates that constitute each of those six Church councils. At the bottom of the pyramid, there are Church Sabhas that constitute each of the Pastorates. For easy appreciation, the set-up is presented in a graphic form, as follows:

(c) Another peculiar feature of this institution is that the election to the Executive Committee of the Diocese, which is the Apex Body, is both by way of direct election as well as through an electoral college. In other words, the Church Sabhas, which lie at the bottom of the pyramid, elect committees that would manage the pastorates. The pastorates elect representatives to the church councils and the church councils elect the members of the Executive Committee of the Diocese. Therefore, one set of members of the Executive committee of the apex body get elected in an indirect manner. But, at the same time, a few members of the Executive Committee of the Apex Body also get directly elected from various levels.

(d) As stated earlier, the Thoothukudi-Nazareth Diocese comprises of six Church Councils, namely, (1) Rev. G.U. Pope Church Council, (2) Rev. John Thomas Church Council, (3) Canon Margoschis Church Council, (4) Rev. Caldwell Church Council, (5) Rev. Thavidu Sundaranar Church Council and (6) Rev. Regland Church Council.

(e) The Canon Margoschis Church Council (one of the six Church Councils that constitute the Diocese) has 17 Pastorates, the names of which are not relevant for our purposes. One of those 17 Pastorates is known as "Nazareth Pastorate".

(f) The Nazareth Pastorate, which is one of the 17 Pastorates that constitute the Canon Margoschis Church Council, has seven Sabhas, one of which is the Nazareth Sabha.

(g) Since the elections to the Apex Body, namely, the Executive Committee of the Diocese, are both direct as well as indirect, they are held normally in four stages, as follows:

- (1) Elections to the Church Sabhs;
- (2) Elections to the Pastorates;
- (3) Elections to the Church Councils; and
- (4) Elections to the Diocese.

It must be remembered, at this stage, that at every stage of the election, one set of persons get elected at that level and one set of persons get elected to the

next higher or to the highest level.

(h) In April-May, 2013, an Election Schedule was announced for the Church Sabhas, Pastorates, Church Councils and the Diocese. The schedule was drawn up as follows:

(1) 02.06.2013 - Elections for the Church Sabhas.

(2) 08.06.2013 - Election of Diocesan representatives from various workers categories, such as those employed in Schools, technical educational institutions and hospitals of the diocese.

(3) 15.06.2013 - Elections to the Pastorates.

(4) 06.07.2013 - Elections to the Pastorates as well as to the Diocesan Executive Committee.

(5) 07.08.2013 - Elections to the Executive and Committee of the 08.08.2013 Apex Body, namely, Diocese, for the posts that are to be filled up by indirect election.

(i) Immediately after the announcement of the election schedule, one Mr. Jeddiya Sathya @ Sathya, who is one of the voters of the Nazareth Church Sabha (one of the bodies at the bottom of the pyramid), filed a civil suit in O.S. No. 177 of 2013 on the file of the Principal Sub-Court, Tuticorin. He was not the sole plaintiff, but was one among three plaintiffs, the other two being Muthu Chandrasekar and A. Arun Samuel. The prayer in the suit was for (i) a declaration that the elections held on 02.06.2013 to the Nazareth Church Sabha was illegal and invalid; (ii) a mandatory injunction directing the defendants to conduct the elections in accordance with the Rules and Bye-Laws, by publishing a list of voters, receiving objections and finalising the list; and (iii) a permanent injunction restraining those who are declared as elected from assuming charge.

(j) The plaintiffs Jeddiya Sathya and two others, also filed an interlocutory application for injunction in I.A. No. 468 of 2013 in the said suit, praying for interim injunction restraining the defendants from conducting any election on 15.06.2013 to the second and the subsequent stages for the Diocese.

(k) On 14.06.2013, the Principal Sub-Court, Tuticorin, granted an interim order of injunction in I.A. No. 468/2013.

(l) Contending that the interim order of injunction granted by the Civil Court was violated, Mr. Jeddiya Sathya (one of the three plaintiffs in the suit), took recourse to a very strange remedy that is not available under law. Apart from filing a petition under Order 39, rule 2-A of the CPC, he also filed a writ petition in W.P. (MD) NO. 10722 of 2013.

(m) The main relief sought in W.P. (MD) No. 10722 of 2013 by Jeddiya Sathya was "for the issue of a writ of mandamus to forbear the respondents, namely, (1) The Superintendent of Police, (2) The Deputy Superintendent of Police, (3) The

Inspector of Police, (4) The Nazareth Pastorate Chairman and (5) The Diocese Treasurer, from conducting the other stages of election on 06.07.2013 or any other date, in view of the pendency of the civil suit in O.S. No. 177 of 2013.

(n) In other words, what the plaintiffs in the civil suit did, was to convert this court into a civil court and seek the reliefs that could be sought only before the civil court, but impleading the Police Authorities, who had nothing to do with the election.

(o) Along with the writ petition in W.P. (MD) No. 10722 of 2013, Mr. Jeddiya Sathya also filed M.P. (MD) No. 1 of 2013 seeking an interim order of injunction restraining the respondents from proceeding with the next stage of election.

(p) On 04.07.2013, a learned Judge of this Court ordered notice in the writ petition and also granted an interim order in M.P. (MD) No. 1 of 2013. The said order reads as follows:

The petitioner has challenged the election held on 02.06.2013 by filing O.S. No. 177 of 2013 on the file of the Principal Sub Court, Tuticorin. In the said suit, in I.A. No. 468 of 2003, on 14.06.2013, the petitioner obtained an interim injunction restraining the fourth and fifth respondents from conducting further election to Nazareth Pastorate, till 28.06.2013.

2. The Amin report dated 15.06.2013, would make it clear he went to the fourth and fifth respondents office at 10.00 a.m. on 15.06.2013 to serve the order copy and it was said to be served upon the Chief Officer, who refused to receive the said order copy and therefore, the said Amin was compelled to paste the same on the door. The Amin report would say that deliberately, the respondents refused to receive the court notice, especially when the Court enjoined the fourth and fifth respondents from conducting election, by order dated 14.06.2013.

3. In view of that, there shall be an order of interim injunction restraining the fourth and fifth respondents from conducting any election as far as Nazareth Pastorate is concerned.

(q) It must be pointed out that none of the persons who were elected in the elections held on 02.06.2013 or 08.06.2013 or prior to the date of grant of injunction were made parties, either to the suit or to the writ petition. Therefore, the Chairman of the Nazareth Pastorate filed a vacate injunction petition in M.P. (MD) No. 2 of 2013. He also filed M.P. (MD) No. 3 of 2013 for maintaining status-quo ante. Similarly, the persons who were elected came up with M.P. (MD) Nos. 4, 5 and 6 of 2013, seeking to implead themselves as parties and also seeking an injunction restraining further elections. This was necessitated, in view of the fact that those proposed parties (impleading petitioners) were prevented from exercising their voting rights in the next stage of election process, in view of the interim order passed on 04.07.2013.

(r) All the miscellaneous petitions, namely M.P. (MD) No. 1 of 2013 filed by the

writ petitioner for an injunction, M.P. (MD) Nos. 2 and 3 of 2013 filed by the Pastorate Chairman for vacating the injunction and to maintain status-quo ante and M.P. (MD) Nos. 4 to 6 of 2013 filed by the proposed impleading parties, were taken-up together for hearing by a learned Judge. By a considered order, dated 31.07.2013, a learned Judge dismissed the petition for injunction M.P. (MD) No. 1 of 2013 and allowed vacate injunction petition M.P. (MD) No. 2 of 2013. However, the learned Judge dismissed M.P. (MD) Nos. 3, 5 and 6, whereby injunctions or directions were sought. But, the impleading petition M.P. (MD) No. 4 of 2013 of proposed parties was allowed.

(s) As against the order of the learned Single Judge, dated 31.07.2013, a batch of writ appeals came to be filed in W.A. (MD) Nos. 835 to 839 and 848 to 850 of 2013. All these writ appeals were disposed of by an order dated 06.08.2013. The operative portion of the order of the Division Bench reads as follows:

6... Therefore, in the interest of both the parties, we pass the following order, with the consent of the learned counsel appearing on either side:

i. The election scheduled to be held on 07.08.2013 and 08.08.2013 shall go on as scheduled;

ii. The members, who got elected on 06.07.2013 from Canon Margoschis Church Council, Nazareth, are permitted to vote in the election to be held on 07.08.2013 and 08.08.2013, but their votes shall be collected in a separate sealed box and to be brought to High Court, Madurai, to be in the custody of Registrar, Madurai, until further orders, to be passed in W.P. (MD) No. 10722 of 2013.

iii. Mr. M. Ajmal Khan, learned Advocate, Madurai, is appointed as Advocate Commissioner today and he shall be present along with the District Judge, who has already been appointed as a Commissioner to conduct the election, purely for the limited purpose of getting the votes of those members, as stated above in a separate sealed box to be handed over to Registrar, High Court, Madurai.

iv. In order to protect their interest/right of all the appellants herein, election result of 07.08.2013 and 08.08.2013 shall not be published until further orders and entire process and the result of the election shall be subject to the result of the writ petition. As the interest/right of the appellants before this Court namely R6, R9, R8, R7 to R13, R10 & R11 (in the writ petition) is reported to have been affected, the same shall be decided in the final adjudication of the writ petition i.e. W.P. (MD) No. 10722 of 2013.

v. Mr. M. Ajmal Khan, the learned Advocate of this Court, who has been appointed as a Court Commissioner, to be present at Nazareth on 07.08.2013 and 08.08.2013, the dates on which the election is to be held at Nazareth and to take the votes of those members, who got elected on 06.07.2013 from Canon Margoschis Church Council, Nazareth, in a separate sealed box (there votes must be kept as a secret). The Advocate commissioner must ensure that those members do not vote along with others.

(t) Therefore, the last stage of elections were held on 07.08.2013 and 08.08.2013. Thereafter, the writ petition W.P. (MD) No. 10722 of 2013 was taken up for final hearing by a learned Judge.

(u) It appears that since the elections to all the four stages had been completed by the time when the writ petition was taken-up for hearing, the writ petitioner, namely, Jeddiya Sathya (who is the first respondent herein), wanted to withdraw the writ petition. But, the persons who were affected by the interim order granted on 04.07.2013 in the writ petition, opposed the request of withdrawal and prayed for undoing the damage that was done to them due to the interim order. Therefore, the learned Judge heard all the parties to the writ petition and disposed it of by an order dated 22.01.2014, dismissing the writ petition, but putting the affected parties to their original position, in which they would have been but for the interim orders passed on 04.06.2013.

(v) Not aggrieved by the dismissal of the writ petition but, actually aggrieved by the restitution ordered by the learned Judge, two persons, who have made it to the Apex Body in the elections held on 07.08.2013 and 08.08.2013, have come up with the above writ appeals.

4. Before proceeding further, it is necessary to note one important aspect, namely, that by the order of the learned Judge assailed in these two writ appeals, the writ petition filed by Jeddiya Sathya (the 1st respondent in both these appeals) has been dismissed as not maintainable. Normally, one would expect the petitioner in the writ petition to come up with a writ appeal, challenging the order of the dismissal of the writ petition. But, the 1st respondent in these appeals, who was the writ petitioner, has not come up with any writ appeal, challenging the order dismissing his writ petition.

5. It is only two persons, who were respondents 14 and 16 in the writ petition, that have come up with the above writ appeals. They are also not aggrieved by the dismissal of the writ petition. But they are aggrieved only by the restitution ordered by the learned Judge, even while dismissing the writ petition.

6. Therefore, the short question that arises for consideration in both these writ appeals is as to whether the learned Judge was right in ordering restitution while dismissing the writ petition or not.

7. Interestingly, the appellants do not question either the power or duty of the Court to order restitution, in cases where a party had suffered damage due to an interim order passed in a proceeding that ultimately came to be dismissed. The only contention of the appellants is that in the case on hand, the damage done by the interim order passed in the writ petition was not so huge as to warrant restitution. In other words, the contention of the appellants is that the impact of the interim order passed in the writ petition on 04.07.2013 was so negligible that there was no necessity for the learned Judge to put the parties back to their original position that prevailed before 04.07.2013, the date of grant of the interim order.

8. The contention of the respondents 7 and 18 to 27 is that due to the interim order of injunction granted on 04.07.2013, at the time of the admission of the writ petition, an entire pastorate, namely, Nazareth Pastorate, whose role in the Canon Margoschis Church Council was so huge as to have an impact upon the election to the Apex Body, has been completely kept away from the election process. Therefore, according to the contesting respondents, the damage caused by the interim order, dated 04.07.2013, was so huge that the learned Judge was obliged to undo the damage by ordering restitution, invoking the principle of *actus curiae neminem gravabit*.

9. Therefore, in order to find out whether there was enough justification for the learned Judge to order restitution, we may have to first take stock of the actual damage caused by the interim order, dated 04.07.2013. To enable us to do this, we must actually get on to the number game involved in the various stages of the election process to the Apex Body.

10. Mr. N. Dilip Kumar, the learned counsel for the 7th respondent, produced a chart indicating the number of categories of posts in the Canon Margoschis Church Council and the total strength of the electorate of all the 17 pastorates that would elect the representatives to the Canon Margoschis Church Council. From the Chart, it appears that the elected body of Canon Margoschis Church Council would comprise of (i) one Church Council Secretary, (ii) four Laymen representatives to the Executive Committee of the Apex Body (one of whom should be a woman and another to be a person under 35 years of age), (iii) five Pastorate workers representatives to the Apex Body (two of whom should be women), (iv) three Diocesan workers representatives from the technical education side (one of whom should be a woman), (v) three Diocesan workers representatives from schools and special schools to the Apex Body (one of whom should be a woman), (vi) one diocesan worker representative from the hospitals, and (7) one diocesan workers representative from the Arts and Science Colleges.

11. It appears that there are 257 eligible voters from all the 17 pastorates that constitute the Canon Margoschis Church Council. Out of the 257 voters from the 17 pastorates, the Nazareth Pastorate itself has 50 voters, in view of its huge size and also in view of the number of educational institutions run by the Nazareth Pastorate.

12. Those 257 voters from the 17 pastorates appear to have different voting rights. 38 of them constitute the electorate for Layman representatives to the Apex Body, 26 constitute the electorate for pastorate workers representatives to the Apex Body, 4 constitute the electorate for diocese workers representatives from the technical education side, 5 constitute the electorate for diocesan workers representative from the school category and one each constitute the electorate for the hospital category and Arts and Science College Category. In other words, the total of 257 voters from 17 the pastorates (including 50 from the Nazareth Pastorate alone), have different and dual voting rights. In the election of the Church Council Secretary, all of them participate. In the election

to Layman representatives, only 38 participate. In the election to pastorate workers, only 26 participate.

13. All the above facts can be appreciated better, if we have a look at the following Chart.

14. From the above chart, it is clear that though Nazareth Pastorate is only one among the 17 pastorates that constitute the Canon Margoschis Church Council, the number of voters that this Pastorate has is 50 out of 257, which is nearly 20% of the total electorate. By the interim order, dated 04.07.2013, passed in a writ petition that was obviously not maintainable, this 20% of the electorate had been kept out of the entire election process. They have been affected in two ways, namely (i) in being prevented from voting; and (ii) in being prevented from contesting for any post. Therefore, it is the contention of the learned counsel for the contesting respondents that the learned Judge was obliged to order restitution, in view of the gravity of the impact that the original interim order caused in the entire election process.

15. But, Mr. S. Meenakshisundaram, learned counsel appearing for the appellant in the first writ appeal, in his own inimitable style, contended that it was not all the 50 voters of the Nazareth Pastorate who were prevented from participating in the election process for all the posts. According to him, some of those 50 voters of the Nazareth Pastorate had already exercised their voting rights to some posts to the Church Council and the Apex Body, in view of the dual system of elections.

16. The learned counsel for the appellant also contended that when the Apex Body comprises of six Church Councils, all of which together comprise of 94 pastorates, with each pastorate having a number of Church Sabhas, the impact caused by the interim order passed in the writ petition, preventing the electorate of one out of 17 pastorates that constitute one out of six Church Councils, is only negligible. He also contended that when some members of the Apex Body are also elected from the grass-root level by way of direct election, the number of persons who were prevented from voting or contesting the elections get reduced to a miniscule minority. Those persons, according to the appellants, did not also come to Court seeking restitution. Therefore, the appellants contend that there was no occasion for the learned Judge to put the clock back.

17. But, at the outset, we should point out that this Court owes a duty to every person, even if it be a single individual, who was prevented by an interim order wrongly passed by this Court in a proceeding that is so obviously not maintainable, from exercising a very valuable right. This principle has its foundation in the legal maxim *actus curiae neminem gravabit*. The approach adopted by this Court in an election petition may be completely different from the approach to be adopted in matters of this nature. If, due to an act on the part of any other party, a person had suffered an infringement of his right, the Court may have to weigh the pros and cons for refusing or granting the relief. But, when the infringement of a right of a person has been caused on account of

an interim order passed by this Court, this Court owes a duty to remedy the same.

18. There is no dispute about the fact that the first stage of the elections were over on 02.06.2013 and 08.06.2013 and the second stage was held on 15.06.2013. Before the third stage of the election could be held on 06.07.2013, an interim order dated 04.07.2013 came to be passed by this Court in the writ petition (out of which these appeals arise). We have already extracted the interim order, dated 04.07.2013. By that interim order, what was injuncted was "any election as far as the Nazareth Pastorate is concerned". As a consequence of the interim order, the election officers of the Church Councils convened a peace meeting on 05.07.2013 in the presence of the Tahsidlar, Tiruchendur. It was resolved therein that the members of the Nazareth Pastorate will not be allowed to cast their votes on 06.07.2013.

19. Therefore, when the list of members contesting for the election to the Canon Margoschis Church Council was released on 06.07.2013, it was found therein that many posts were left vacant. From the chart that we have given above, it could be found that, for filling-up those posts, only those belonging to the Nazareth Pastorate were eligible. The posts for which elections could not be held on 06.07.2013 to the Canon Margoschis Church Council are (i) the workers category from schools and special schools, (ii) the workers category from technical education side, both general and women and (iii) the workers category from the hospital side. Therefore, it is clear that many of them not only lost the right to cast their votes but also their right to contest in the elections. This state of affairs resulted solely on account of the interim order granted by this Court on 04.07.2013 and hence the learned Judge was right in ordering restitution.

20. In Mohammed Gazi Vs. State of M.P. and Others, , the Supreme Court pointed out that the maximum "*actus curiae neminem gravabit*" is founded upon justice and good conscience. The Supreme Court also noted that the applicability of this maxim has been approved by the Supreme Court for a long time.

21. In South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , the Supreme Court dwelt at length, the scope and reach of the principle of restitution. In that case, the Supreme Court was concerned with the liability of coal fields to pay interest on the royalties, the recovery of which was originally stayed by the High Court and later vacated by the Supreme court. After the vacation of the stay, the State of Madhya Pradesh raised a demand against the lessees of mines for payment of interest, for the period for which the payment of enhanced amount of royalty was delayed. The demand for interest was resisted and it was in that context that the Supreme Court invoked the doctrine of restitution.

22. Dealing with the liability of the consumers/purchases to pay interest during the period during which there was a restraint order issued by the Court, the Supreme Court indicated in Paragraph 26 of the Report that in its etymological sense, the word "restitution" means restoring what had been lost to a party upon

the modification, variation or reversal of a decree or order. The word "restitution", the Supreme Court pointed out, is used in three senses;

- (i) return or restoration of some specific thing to its original owner or status;
- (ii) compensation for benefits derived from a wrong done to another; and
- (iii) compensation or reparation for the loss caused to another.

23. After pointing out that with the principle of restitution had been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908, the Supreme Court added a note of caution by stating that Section 144 C.P.C. is not a fountain source of restitution. Section 144 is merely a statutory recognition of a pre-existing rule of justice, equity and fair play

24. The Supreme Court made it clear that "Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed, which, in view of the reasoning adopted by the Court at the stage of final decision, the court earlier would not or ought not to have passed."

25. Quoting from Cairns, L.C. in *Rodger v. Comptoir D'Escompte de Paris* (1871) 3 PC 465, the Supreme Court indicated in *South Eastern Coal Fields* that it is one of the first and highest duties of all courts to take care that the act of court does no injury to any of the suitors.

26. Therefore, it is clear that more than the right of the affected persons, it is the duty and obligation on the part of the Court to undo the wrong perpetuated by an interim order that forms the foundation of principle of restitution. Hence, what the learned Judge did was perfectly in order.

27. At the cost of repetition, we have to point out that one individual (the writ petitioner), who was a member to one of the seven Church Sabhas that constitute one of the 17 pastorates, which in turn constitute one of the six Church Councils that made up the Executive Committee of the Diocese, put a spoke in the wheel of the entire election process by obtaining an interim order on 04.07.2013 in a writ petition that was wholly not maintainable and which was nothing but an abuse of the process of Court. CSI Thoothukudi-Nazareth Diocese is not amenable to the jurisdiction of this Court under Article 226 of the Constitution. Election to CSI Thoothukudi-Nazareth Diocese can at the most be the subject matter of a civil suit and not a writ petition under Article 226 of the Constitution. The writ petitioner was aware of this and he went before the civil court and obtained an order of interim injunction. On the sole ground that the interim order granted by the civil court was not complied with, the writ petitioner came up with the writ petition, by unnecessarily impleading the police authorities and obtained an injunction restraining the respondents from holding any further elections from the Nazareth Pastorate.

28. The damage caused by the said interim order was that about 50 out of 257 voters that constitute the electorate of Canon Margoschis Church Council could not participate in the election to the post of Church Council Secretary. Though some of those members could participate in the direct elections to the Church Council and to the Diocese, they could not participate in the elections to other posts in the Church Council as well as in the Diocese. What was lost was not merely the right to vote but also the right to contest in the elections. It is stated that a majority of the educational institutions of the CSI Nazareth Diocese come under the Nazareth Pastorate and the Canon Margoschis Church Council. Therefore, the damage caused by the interim order dated 04.07.2013 is not something that could be swept under the carpet as something insignificant. Hence, the learned Judge was right in ordering restitution.

29. Another important aspect to be taken note of is the order of the Division Bench, dated 06.08.2013, in W.A. (MD) Nos. 835 to 839 and 848 to 850 of 2013. We have already extracted, in a previous paragraph of this order, the operative portion of the order of the Division Bench. Immediately preceding the portion that we have extracted, there was a very significant observation made by the Division Bench. That observation is to be found in paragraph 6 of the order of the Division Bench, dated 06.08.2013. That observation reads as follows:

Though the learned counsel for the Diocese Treasurer would submit that the election process has already been completed and the election is going to be held on 07.08.2013 and 08.08.2013, we are of the considered view that when the appellants have been deprived of their right, for no fault of them, in the election, namely, Canon Margoschis Church Council, Nazareth. Hence their interest and right should be protected.

30. Apart from recording a clear finding that some of the members have been deprived of their rights, the Division Bench also prohibited the publication of results until the writ petition was finally decided. Therefore, no vested right had been created in favour of the persons who succeeded in the elections that were held after excluding an entire pastorate. The learned Judge has noted in paragraph 10 of his order that this Nazareth Pastorate is one within whose jurisdiction there are 18 educational institutions as well as hospitals. Due to the exclusion of the Nazareth Pastorate, the persons from the other Pastorates have gained the control of those educational institutions. Therefore, the learned Judge had no alternative except to order restitution.

31. As pointed out by the learned Judge, the 1st respondent herein made attempts to withdraw the writ petition, after the elections were over on 07.08.2013 and 08.08.2013. Had he been allowed to withdraw the writ petition, without any restitution, the injustice caused to a section of the electors by the interim order passed on 04.07.2013 would have continued. The appellants are the beneficiaries of such an attempt on the part of the writ petitioner to withdraw the writ petition. Therefore, we are of the clear view that the order of the learned Judge cannot be found fault with, especially in the facts and circumstances of the

case.

32. Therefore, the writ appeals are dismissed. No costs. Connected miscellaneous petitions are also dismissed.