

(1995) 12 MAD CK 0056
In the Madras High Court

The Bishop in Office of CSI Vellore Diocese, Rt. Rev. Rt.
Baskaran and Others

APPELLANT

Vs

Jeyakaran Joseph and Others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Citation : (1996) 1 LW 418 : (1996) 1 MLJ 657

Judgement

1. This litigation depicts a very sad picture of persons who are supposed to have dedicated their lives to the cause of spreading the message of love and harmony in the name of Jesus Christ and purporting to be holy evangelists but actually indulging in acrimonious quarrels and in fights of attrition running after the power of office ignoring the duty of service attached thereto. The fact that there are so many litigations in different courts in the state speaks volumes of their failings as human beings and their inability to practice what is preached by them to the common folk whom they describe compendiously as ""flocks"". It is quite obvious that none of them remembers the command of their Lord ""Go ye and make disciples of all nations"".

2. Before advertng to the present dispute, it is better to refer to the formation of Vellore Diocese and the relevant provisions of the Constitution of the Church of South India (hereinafter referred to as "CSI") as well as the Constitution and the by-laws of the Vellore Diocesan Council in order to appreciate the scope of this litigation. The CSI is the Church constituted by the union in 1947 at Madras, Madurai, Malabar, Jaffna, Kannada, Telugu and Travancore Church Councils of the South India United Church. The South India Province of the Methodist Church comprising the

Madras, Trichinopoly, Hyderabad and Mysore Districts and the dioceses of Madras, Dornakal, Tirunelveli and Travancore and Cochin in the

Church of India, Burma and Ceylon, to which in 1950 was added the North Tamil Church Council of the South India United Church also formed

part of the CSI. The purpose of the union by which it has been formed is the carrying out of God's will as expressed in Lord's prayer That they all

may be one that the world may believe that Thou didst send me. It is believed that the Church in South India will become a more effective

instrument for God's work and there will be greater peace, closer fellowship and fuller life within the Church and also renewed eagerness and

power for the proclamation of the Gospel of Christ. It is formed by a combination of different elements each bringing its contribution to the whole

and not by the absorption of any one by any other. It is said to be a comprehensive Church and its members, firmly holding the fundamentals of the

faith and order of the Church Universal, are allowed wide freedom of opinion in all other matters and wide freedom of action in such differences of

practice as are consistent with the general framework of the Church as one organised body. The intention was to preserve the heritage of each of

the uniting Churches without losing the continuity of its own life, but preserves that life enriched by the union with itself of the other Churches. It is

provided in the Constitution of the CSI that the ordained ministry shall consist of Bishops, presbyters and Deacons. Every Bishop of a diocese

shall ex-officio be a member of the Synod of the Church. The bishop of the diocese shall be President of the Diocesan Council and shall have the

right to take part in the proceedings of any standing committee, board or council of the diocese. He shall have the right of suspending the operation

of certain classes of decisions or resolutions of the Diocesan Council in accordance with the provisions of Chapter VIII of the Constitution.

Chapter VIII provides for the constitution of membership of every Diocesan council. According to Rule 2, every Diocesan Council shall determine

in its own constitution the number, necessary qualifications and method of election or nomination of the lay representatives in it, provided that the

qualifications shall in conformity with Chapter VIII, Rule 4, include adult communicant membership of the Church. Under Rule 4, every Diocesan

Council has power to make rules and pass resolutions and take executive action of the general management and good government of the Church in

the diocese, subject to the provisions of the Constitution of CSI and in particular to those concerning the Synod of the Church. Rule 5 provides

that except as provided under Chapter IX, Rule 15, the Diocesan Council shall be the ultimate financial authority of the Church in its diocese in all

matters concerning its internal administration, and that the Bishop of the diocese shall not as bishop or president of the Diocesan Council have any

separate controlling authority over the finance of the diocese. Rule 6 provides that at each ordinary session of the Diocesan Council/Synod, a

commission shall be appointed to enquire into and settle all election disputes in the dioceses at the Synod level. Rule 8 declares that subject to the

provisions of the Constitution of the CSI, a Diocesan Council has power to frame, amend or alter its own constitution, provided that no diocesan

constitution or any alteration therein shall be of force if the Synod shall rule that such constitution or alteration therein is at variance with anything

contained in the Constitution of the CSI. Rule 11 provides that every Diocesan Council shall ordinarily meet not less than once in every two years.

According to Rule 13, all the members of the Church agree that if any legal proceedings are to be instituted by such member and in which the

Officers of the Diocese are made parties, such suit shall be instituted only in such court within whose territorial jurisdiction the office of the Diocese

is at that time situate.

3. Chapter IX of the Constitution deals with Composition and Membership of the Synod. Rule 1 provides that all Bishops of the Church, whether

diocesan or assistant, the officers of the Synod and the General Secretary of the CSI Women's Fellowship shall be ex-officio members of the

Synod. Rule 6 states that the officers of the Synod shall be a Moderator, a Deputy Moderator, a General Secretary and a Treasurer. According to

Rule 8, all the officers shall be elected during each ordinary meeting of the Synod and shall hold office from the close of that meeting till the close of

the next ordinary meeting of the Synod. As per Rule 20, an ordinary meeting of the Synod shall be held once in every two years at such time and

place as the Executive Committee may determine. It is also provided that Special meetings of the Synod may also be summoned by the Executive

Committee. A reading of Rules 8 and 20 together shows that the term of the Officers of the Synod is two years. Rule 15 of Chapter IX enables the

Synod to take such steps as it considers necessary for the good administration of the internal affairs of the Diocese if it is satisfied that a Diocesan

Council is unable or unwilling to perform its functions as laid down in the Constitution of the CSI or its own Constitution. The exercise of the said

power is subject to the fulfilment of certain conditions set out in the rule.

4. The Vellore Diocesan Council to which the present litigation relates, was inaugurated on 26th January, 1976, following a resolution of the Synod

of the CSI passed at its Fifteenth Session of January, 1976. The Diocese was formed by bifurcating the areas in the Diocese of Madras,

constituted as such at the time of the inauguration of the CSI on 27.9.1947 at St. George's Cathedral, Madras. The Diocese functioned adopting

the Constitution and By-laws of Madras diocesan council till 31st December, 1976. The Draft Constitution drawn up for the Diocese of Vellore

was accepted at the meeting of the Vellore Diocesan Council on December 18, 1976, subject to the approval of the CSI Synod. The Constitution

came into force from 1.1.1977. It was revised and amended in 1983. In the Preamble it is stated that nothing in the Constitution shall be of any

effect which is not in agreement with the Constitution of the CSI, of which agreement, the Synod of the CSI shall be the sole judge. The object and

purpose of the Diocese shall be to carry forward effectively the task of evangelism in obedience to the command of the Lord. The Council is the

body constituted to have supervisory, legislative and executive powers over Pastorates and its various institutions within its jurisdiction and for the

internal Government and the administration of its own affairs within the framework of the Constitution of the CSI. The membership of the Council is

provided with in Article III. It consists of the Bishop in Vellore, any retired Bishop resident in the Diocesan area, all presbyters, ordained Deacons,

without voting privileges, one Missionary representative from each of the supporting bodies, the President of the Women's Fellowship of the

Diocese and elected Lay Representative, elected from each pastorate within the Diocese of Vellore, according to the scale prescribed in the

Article. Article IV sets out the Officers of the Council, the relevant part of which reads as follows:

A. 1. The Bishop, Ex-officio, the President of the VDC.

2. The Vice President - who shall be an ordained person.

3. The Secretary

4. The Treasurer

B. The Vice President and the Secretary shall be elected at each ordinary meeting of the Vellore Diocesan Council.

C. The Treasurer shall be elected at each ordinary meeting of the Vellore Diocesan Council from a panel of 2 names proposed by the Diocesan

Executive.

1. These Officers shall hold office from the close of the meeting at which they are elected until the close of the next ordinary meeting of the VDC.

2. In the event of vacancy arising in any of the above offices the Diocesan Executive Committee shall make an appointment until the close of the next ordinary meeting of the VDC.

D. ...

E. The Secretary shall be the person to sue and be sued in the name and on behalf of the Diocese of Vellore.

Article V provides that the Council shall ordinarily meet not less than once in every two years. Under Article VII-C it is provided that the Council

shall be subject to such rulings as the Synod of the CSI may make and that the Council shall elect its representatives to the Synod according to the

Constitution of the CSI. Article 10 relates to Executive Committee of the Council. The Committee shall consist of:

1. The Officers of the Council

2. Six Presbyters and seven lay persons of whom at least one shall be a woman to be elected at each ordinary meeting of the VDC of these 2

Presbyters and 2 lay persons shall be under 35 years of age care being taken to see that each area is represented.

3. Two members nominated by the Bishop preferably from Areas or work not represented.

5. Chapter Two in Part II sets out the bye-laws for the Council. Bye-law No. I provides that the Council shall ordinarily meet once in every two

years, and that the meeting shall ordinarily be held during the public holidays in January. The exact date and the place of the meeting shall be

determined by the Executive. Bye-law II provides for at least six weeks notice of all ordinary meetings to every member of the Diocesan Council

and to all Pastorate Committees. Bye-law V is in the following terms:

Representatives of Pastorates and nominated members shall be members from the opening of the meeting, after their appointment until the opening

of the next ordinary meeting of the Diocesan council whatever happens to the Pastorate committee including the appointment of an ad hoc

Committee during the biennium. These representatives shall serve a full terms of the Council unless they are debarred by other clauses. It is open to

any Pastorate to re-elect the same representatives. But they are not eligible to get reelected if they are not regular members of the Church for the

succeeding period.

6. A combined reading of Article IV, Clauses B and C, Article 5 of Chapter I and Bye-laws I and V will show clearly that the term of office of the

members of the council including the officers excepting the President shall be ordinarily two years. Bye-law No. I is mandatory in its terms that the

council shall meet ordinarily once in every two years. In such a meeting, the Vice President, Secretary and the Treasurer shall be elected. The

representatives of Pastorates and nominated members shall be members of the Council only till the opening of such ordinary meeting.

7. Keeping the above provisions of the Constitution of the CSI and the Constitution of the Vellore Diocese Council in mind, we shall advert to the

case put forward by respective parties in this litigation. These appeals arise out of C.S. No. 1080 of 1992 filed on the original side of this Court by

respondents 1 and 2 in these appeals. The second respondent is said to be no more. The parties will be referred to in this judgment according to

their rank in the suit. In the plaint several allegations have been made mainly against the Bishop, who is shown as the second defendant. It is alleged

that the second defendant was installed as Bishop on 16th October, 1988 and the 7th Council of the Diocese was elected in October, 1988 and

constituted in January, 1989. The relationship between the second defendant and the other officers of the Council became strained and about 34

members of the Council sought to curb the powers of the second defendant as Bishop. He was called upon to convene an extraordinary meeting of

the Council to consider a number of proposed amendments to the Constitution and Bye-laws, but he failed to do so. When they approached the

Moderator of the CSI, they were assured that the proposed amendments could

be placed before the 8th Council as soon as it was constituted.

Election of lay representatives for the 8th Council took place and the ordinary general meeting of the Council was called for between 12th and

16th January, 1991. The meeting could not be held as an ordinary member of the Church filed a suit O.S. No. 948 of 1990 on the file of

Additional District Munsif, Vellore and get an order of injunction restraining the second defendant from holding a meeting. Injunction was in force

till 31.12.1991. Thereafter, fresh notices were issued for holding a meeting on 20.2.1992 at Tindivanam. The meeting was not held as the Bishop

sent a Circular to all the Churches in the Diocese that at a Meeting of the CSI held on 16.1.1992 an Administrative Committee was appointed by

the CSI because the Vellore Diocesan Council was unable to meet. It is alleged that the decision to appoint an Administrative Committee was

taken on the basis of a misrepresentation made by the Bishop. Fifty members of the Council including the plaintiffs met the Moderator on

20.1.1992 and apprised him of the real situation. He assured them that he would issue a direction to the Administrative Committee to convene and

conduct the meeting of the Council according to the Schedule already fixed, i.e., on 20.2.1992. Though the plaintiffs attended the meeting, the

members were not allowed to enter the premises and a Board was displayed that the meeting was postponed without disclosing any reason. It is

alleged that the postponement of the meeting was maneuvered by the Bishop. He set up a classmate of his to file a suit O.S. No. 70 of 1992 on the

file of the District Munsif, Ranipet for an injunction restraining three members of the Council from attending the Council or participating therein. The

suit came to be dismissed on 30.7.1992. The appointment of the Administrative Committee by the Synod is itself illegal having been procured by

fraudulent misrepresentation by the second defendant. Hence, the Committee has no power to do any act, deed or thing in relation to the Diocese.

The conduct of the Committee has created confusion among all the Pastorates as well as the institutions under the control of the Diocese. The

Committees nominated by the Administrative Committee for various affairs are illegal and cannot function as such. The 7th Council which was duly

constituted has been duly functioning and is still in existence, entitled to function. The Standing Committees and Boards are also entitled to function.

The Executive Committee of the 7th Council has to convene the ordinary meeting of the 8th Council. As members of the Church as well as the 7th

Council, the plaintiffs are entitled to have the administration of the Diocese carried out in accordance with the Constitution of the CSI and the

Diocese. Hence, they have filed the present suit. The cause of action has arisen partly within the City of Madras where CSI was its registered

office and where on 16.1.1992 communications were issued about the appointment of the Administrative Committee. Prayers (a) to (e) in the

plaint are in the following terms:

(a) for a declaration that under the Constitution of CSI as well as under the Constitution of Vellore Diocese, Synod of CSI has no power or

authority to supersede the Diocesan Council duly elected and constituted under the provisions of the Constitution of Vellore Diocese;

(b) For a declaration that the 7th Council of the CSI Vellore Diocese is entitled to administer the affairs of the Vellore Diocese until the ordinary

meeting of the 8th Council is convened and held;

(c) Consequential injunction restraining the Synod or any person claiming under the Synod including the Administrative Committee from in any

manner interfering with the normal administration of the affairs of CSI Vellore Diocese and all its institutions by the 7th Council through its

Executive Committee and other Standing Boards.

(d) For a declaration that the members of the Diocesan council elected during October, 1990 together with other members appointed and

nominated shall be entitled to succeed the 7th Council of the Vellore Diocese of CSI as the members of the 8th Council of Vellore CSI Diocese;

(e) for a consequential mandatory injunction directing the defendants to convene and hold the postponed meeting of the 8th Council or in the

alternative for the appointment of an Advocate Commissioner to convene the postponed meeting of the 8th Council of the Vellore Diocese to elect

its office bearers of the 8th Council.

8. The first defendant in the suit is the Moderator of the CSI, for himself and representing all the members of the CSI. Initially, one Rt.Rev.Ryder

Devapriyam was the Moderator and later he was substituted by the present Moderator Rt.Rev.Rt.Rev. P. Vasanth Dandin. The second defendant

is the Bishop. Defendants 3 to 5 are impleaded as they claim to be Vice-

President, Secretary and Treasurer of the Administrative Committee respectively.

9. It is seen from a perusal of the plaint that the entire case of the plaintiffs rests on the pedestal that the 7th Council of the Diocese is legally functioning and it is entitled to do so till the 8th Council is formed and the Administrative Committee appointed by the Synod of the CSI has no legal existence. Prayers (b) to (e) relate to the 7th Council and the formation of the 8th Council and prayer (a) relates to the Administrative Committee appointed by the Synod of the CSI.

10. The plaintiffs filed Application No. 445I of 1992. for appointment of a Commissioner to convene and conduct the 8th Council Meeting in January, 1993. The plaintiffs had earlier filed Application No. 704 of 1992 for an injunction restraining the Synod from interfering with the administration of the affairs of the Diocese by the 7th Council pending disposal of the suit. A learned Judge of this Court passed a common order on 9.2.1993 in the said applications directing the holding of a meeting of the 8th Council of the Diocese on 19th and 20th February, 1993 at Vellore with the agenda already Communicated to the members. The order provided that the 174 persons whose names were found in the list placed before the court by counsel for the petitioners were entitled to exercise their vote and the ten persons nominated by the Bishop were also eligible to take part in the election. However, the learned Judge held that the newly ordained Presbyters, seven in number, were not entitled to vote and consequently, the Bishop shall not nominate 14 Lay Representatives. The order expressly stated that the term of the 8th Council will be two years from the date of constitution. In addition to the three observers nominated by the Moderator, the order appointed an advocate by name Mr. M. Santhanam, Retired District and Sessions Judge to be observed to be present in the Council Meeting along with the other three observers. The order also provided that the election shall be conducted irrespective of any order of injunction of any nature from any Subordinate court.

11. Persons who were prevented from voting by the said order preferred an appeal in O.S.A. No. 23 of 1993 and prayed for interim orders in C.M.P. No. 2292 of 1993. A Division Bench passed an interim order on 18.2.1993 as follows:

Heard; Having heard Learned Counsel for the parties we are of opinion that the court shall have to postpone any final adjudication of the

controversy even for the purpose of disposal of the petition for injunction stay, until detailed affidavits are filed on behalf of the all the parties and

particularly when the controversy has been respect to the composition of Diocesan council and the conducting of elections in this behalf, we are of

opinion that a modification in the direction issued by the Learned Single Judge at this stage is desirable. We accordingly order as follows:

The election as scheduled shall be held on 19th and 20th of February, 1993 in accordance with the directions in the impugned order. But the fourth

respondent shall permit in one, the seven (7) newly ordained Presbyter and consequentially the fourteen (14) nominated members and in another

held election without the seven (7) newly ordained Presbyters and consequentially the fourteen (14) nominated members, prepare accordingly two

result sheets and publish the results in the presence of the observers and also submit the same to the court. Decision as to which of the two

elections will be valid or which of the two elected group shall be allowed to function pendent elite shall be taken at the next hearing. Put up as

prayed for on Wednesday - the 24th February, 1993 on ""Notice of Motion.

The appeal was finally disposal by order dated 24.2.1993. After referring to the earlier order dated 18th February, 1993, the Division Bench said:

Pursuant to the above order, the Bishop in Vellore, CSI Voorgheese Diocese, has submitted a report. His report shows that in the election in

which the first of the above was applied and the election in which the second of the above was applied, however, the elected Vice President,

Secretary and Treasurer, are not substantially different. Same is the position as to the constitution of the various committees and the boards. In

view of the above, we are inclined to order as follows:

The Committee which is elected by 184.7 (Presbyters) and 14 (nominated laymen) shall function pending suit to decide whether nominations of the

14 lay men by the Bishop is valid. Learned Counsel for the plaintiffs have no objection to the above. A question seriously contested by learned

Counsel for the plaintiff/respondents, however is whether these fourteen nominated payment should be allowed to function as Members of the

Council. He is however agreeable to a suggestion of the court that pending the

suit, these nominated laymen should be allowed to function but the issue as to whether their nomination is valid should be determined in the suit. Learned Counsel for the other parties do not have, as they cannot have, any objection to the above. The only order that we could make this stage of the proceedings which has arisen pursuant to an order passed in a petition for injunction, is to ensure that the elections are held and who would function pendent elite. The abovesaid, in our opinion, should resolve the controversy between the parties for the purpose of injunction. The suit, it appears shall have a limited issue mainly concerning the validity of the nomination of the fourteen laymen to the council. The above elected members shall be deemed to have assumed office in accordance with the constitution of the Vellore Diocese. The fourteen nominated laymen shall function as members of the Council, pendent elite, subject to the adjudication in the suit. The appeal is ordered, accordingly.

12. Thus, the 8th Council was formed under the directions of this Court and on the formation of the same, the 7th Council ceased to exist. Prayers

(b), (c), (d) and (e) become automatically infructuous and nothing survives therein. As regards prayer (a), though it is worded in such a manner that

the plaintiffs seek a declaration as to the powers of the Synod of the CSI, vis-a-vis the Diocesan Council, it does not survive for consideration

once the 7th council ceased to function as the complaint of the plaintiffs is only with regard to the Administrative Committee appointed by the

Synod while the 7th Council was functioning.

13. However, the plaintiffs have chosen to widen the scope of the suit by filing five interlocutory applications. The first of them viz., O.A. No. 963

of 1992 was filed in December, 1992 even before the meeting of the 8th Council was held. The prayer therein was to pass an order of interim

injunction restraining defendants 2 and 4 from acting in any manner or making any representation as Secretary and Official correspondent of the

Voorgheese College as Well as the Secretary of the CSI Voorgheese College Association pending disposal of the suit and pending disposal of the

application to bring on record Rt.Rev. Dandin in substitution of Rt.Rev. Ryder Devapriyam. By the said application, a dispute relating to the

constitution of the Management Board of the Voorgheese College, Vellore was sought to be brought into the present suit and reliefs were claimed

with reference thereto. It is not in dispute that the educational agency administering the College is CSI Voorgheese College Association a Society registered under the Societies Registration Act and governed by a separate constitution. The averments in the plaint or the prayers made in the plaint do not cover any dispute with regard to the management of the College. Yet, the plaintiffs chose to file the said application with the above prayers.... In the counter-affidavit filed by the contesting defendants it was stated that the application was filed mala fide as in a suit filed in the City Civil Court by a non-teaching staff association, they could not get an order of injunction and they set up the present plaintiffs to apply for such a relief in the present suit itself. Whether that statement of the contesting defendants is correct or not, there can be no doubt whatever that the dispute relating to the Management of the College does not fall within the scope of the present suit. As stated already, the suit has become infructuous. Even assuming that it is not so and prayer (a) is granted in favour of the plaintiffs herein ultimately, the reliefs sought by the plaintiffs in O.A. No. 963 of 1992 cannot be granted to them. Thus, the application is entirely outside the scope of the suit and travels very much beyond the prayers in the suit.

14. Though the said contention was urged by the contesting defendants and rulings were cited in support of the same by them, the learned Judge has unfortunately failed to appreciate the same in the proper perspective and chosen to grant the prayer. Surprisingly, two other persons, viz., Voorgheese College represented by its Principal and Secretary and CSI Voorgheese College Association and Governing Body represented by its Secretary were allowed to get themselves impleaded as defendants 6 and 7 in the suit. It is not known how they are considered to be either necessary or proper parties to the present suit. Unfortunately, they have been impleaded in the suit and they were also allowed to support the plaintiffs in O.A. No. 963 of 1992. It is now well settled that a relief cannot be granted interlocutorily if it is not possible to grant the same ultimately in the main proceeding. Vide: K.P.M. Aboobucker Vs. K. Kunhamoo and Others, , Madras Motors Finance and Guarantee Company Limited v. R. Dhanam 1978 T.L.N.J. 206 and St. Aloysius Indian Higher Secondary School Vs. Association for Protection of Education, .

The reasoning of the learned Judge that confusion and chaos have prevailed in the College on account of the interference by the Admin is iterative

Committee appointed by the Synod as per the CSI Constitution which warrants the grant of injunction. The learned Judge has erroneously

proceeded on the assumption that the allegation of such confusion and chaos has not been denied by the contesting defendants. That only shows

that the learned Judge has failed to take note of the relevant averments contained in the counter-affidavit filed by the second defendant and in

particular paragraph 11 thereof. The order of the learned Judge in the said application viz., O.A. No. 963 of 1992 is, therefore, unsustainable and

it has to be set aside and the application is liable to be dismissed. Any dispute as regards the administration of the college has to be decided in a

separate proceeding and certainly not in the present suit. It should also be remembered that there is no substance in the contention of the plaintiffs

that even after the forming of the 8th council, there was confusion and chaos in the administration of College on account of the interference of the

Administrative Committee. It should be remembered that the application itself was filed before the 8th Council was formed and after the formation

of the said council, the application ought to have been withdrawn if the 8th council was functioning according to the Constitution of the Diocese.

15. The plaintiffs filed Application Nos. 118, 842, 843 and 844 of 1995. In O.A. No. 118 of 1995 the prayer is for an injunction restraining the

first defendant viz., the Moderator from appointing any Administrative Committee or Administrator in respect of the affairs of CSI Vellore

Diocese. The learned Judge has not disposed of the said application but has kept it in abeyance to be called along with the main suit C.S. No.

1080 of 1992. He has adopted that course for the reason that the first defendant made it clear that the Synod did not purpose to interfere with the

affairs of the Council and, therefore, there was no necessity for granting an injunction at present. But while coming to the conclusion, the learned

Judge has accepted the arguments of learned Counsel for the plaintiffs that the terms of the 8th council will not come to an end at the expiry of two

years as prescribed by the order of a learned single Judge of this Court in Application Nos. 704 and 4451 of 1992. The learned Judge has

interpreted the order of the Division Bench in O.S.A. No. 23 of 1993 to mean that the 8th council will continue to be in office in accordance with

the terms of the constitution under which it would continue to function till the next council is formed. We are unable to persuade ourselves to agree with the reasoning of the learned Judge. We have already pointed out while referring to the provisions of the Constitution of the CSI and the Constitution of the Diocese in detail earlier that the term of office of the Council is intended to be only two years and in any event, not to exceed two years. It is only in accordance with the said provision of the constitution, the learned Single Judge in his order dated 9.2.1993 in Application Nos.704 and 4451 of 1992 prescribed the term of office of the 8th council to be two years. That direction was not in any manner disturbed by the order of the Division Bench. In fact, the Division Bench had no occasion to consider the same, as the appeal before the Bench related to the voting rights of the newly ordained Presbyters and the nomination of Lay Representatives by the Bishop. The directions contained in the order of the learned single judge in these applications were entirely in accordance with the provisions of the Constitution and the order is fully binding on the parties to the suit as well as the 8th Council of the Diocese. As we have taken the view that the suit itself is infructuous, this application should also fail and it ought not to have been kept in abeyance.

16. The next application is O.A. No. 842 of 1995, in which the prayers of the plaintiffs is to pass an order clarifying that the tenure of the 8th council shall extend upto the opening of the ordinary meeting of the 9th council after it is duly constituted, pending disposal of the suit. The prayer is certainly one beyond the scope of the suit. Such a relief cannot be granted interlocutorily when the same cannot be granted in the main suit itself. Further, as pointed out already, the tenure of the 8th council has been specifically prescribed to be two years by the order of this Court dated 9.2.1993. The 8th council started functioning from 20.2.1993 and their term expired on 19.2.1995. Hence, the application deserves to be dismissed and the order passed by the learned Judge requires to be set aside.

17. In Application No. 843 of 1995, the prayer is to direct the second defendant to convene the Executive Committee to consider the agenda a copy of which is attached to the Judge's Summons pending disposal of the suit. It is interesting to note that no agenda has been annexed to the Judge's Summons in the said application. The learned Judge has not even taken

note of the said fact while considering the application. This has been pointed out by the contesting defendants in their counter-affidavit. They have stated that no copy of the alleged agenda has been given to them. But yet the application has been ordered by the learned Judge! In view of the fact that the suit is infructuous, no such relief as prayed for in the application can be granted in favour of the plaintiffs.

18. The next application is O.A. No. 44 of 1995, to appoint an advocate Commissioner with sufficient power to be present as an observer at the meeting of the Executive Committee so that the meeting could be held in a proper manner pending disposal of the suit. As we have held that the direction to hold a meeting of the Executive committee cannot be issued as prayed for by the plaintiffs, it follows that the prayer in this application cannot also be granted. The learned Judge has instead of appointing an advocate-Commissioner directed the Moderator of the CSI viz., Rt.Rev.

Vasanth P. Dandin to be observer with all powers to be present at the Executive Committee to be convened by the Bishop and to submit his report within fifteen days from the date of the meeting. The order of the learned Judge has to be set aside and the application deserves to be dismissed.

19. It is very strange that the plaintiffs should seek to perpetuate the pendency of the suit by filing applications of this type when the object of the suit has already been achieved and the purpose served. The entire frame of the suit is only for formation of the 8th council and it has been brought about by interlocutory orders. If the plaintiffs have been acting bona fide, they ought to have reported in court that nothing survived in the suit and helped the 8th council to function properly. On the other hand, the plaintiffs, have come forward with these applications in order that the 8th Council can continue indefinitely in spite of its term being restricted specifically by the order of this Court. The learned Judge has accepted the contention of the plaintiffs that prayers (a) to (e) were subsisting, as they were available to the plaintiffs when the suit was filed. That is hardly an acceptable reason. When by subsequent events, the prayers have become infructuous and nothing survives in the suit, the court ought to take the same into account and pass appropriate orders.

20. In the result, the appeals are allowed and the common order of the learned

Judge is set aside. O.A. No. 963 of 1992 and Application

Nos.842 to 844 of 1995 are dismissed. The parties will bear their respective costs.