
(2009) 09 MAD CK 0038

In the Madras High Court

Case No : OSA No's. 293 and 296 of 2009, MP No.1 of 2009 in OSA 293 of 2009 and MP No's. 1 and 2 of 2009 in OSA 296 of 2009

The Executive Committee

APPELLANT

Vs

Rt. Rev. Dr. V. Devasahayam and Madras Diocesan Council

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (2009) 8 MLJ 329

Hon'ble Judges : R. Subbiah, J;M. Chockalingam, J

Bench : Division Bench

Advocate : V. Prakash for Adrian D. Rozario, for the Appellant; R. Thiagarajan for V. Sanjeevi, for R1, for the Respondent

Judgement

M. Chockalingam, J.—These appeals challenge a common order of the learned Single Judge of this Court made in O.A. No. 492 of 2009,

an application for interim injunction restraining the defendants from interfering with the plaintiff's holding the office and discharging the functions of

the Bishop in Madras, Madras Diocese, and in Application No. 2171/2009, an application for stay of the operation of the letter dated 30.4.2009

of the Moderator to the plaintiff.

2.The Court heard the learned Senior Counsel on either side.

3.These appeals have arisen under the following circumstances:

(a) One Laity Association of Church of South India (CSI) - Madras Diocese, represented by its General Secretary and Vice President, filed a suit

in C.S. No. 295 of 2009 for declaration that the fifth defendant therein Rt. Rev. Dr. V. Devasagayam, cannot hold the post of Bishop of CSI,

Madras Diocese, beyond 1.5.2009 and also for consequential reliefs along with

the mandatory injunction to direct the defendants 2 and 3 therein

to issue a direction to the fourth defendant in respect of the nomination of Bishopric candidates to the post of Bishop. In that suit, the plaintiff filed

an application in O.A. No. 329 of 2009 seeking interim injunction to restrain the fifth defendant referred to above, from holding the post of Bishop

beyond 1.5.2009 and also an application in A. No. 1561/2009 seeking for a direction to the respondents 1 and 2 to commence election process.

In that suit, pursuant to the orders of Court, summons were served upon the defendants. The Court recorded the statements of the defendants 1

and 2 therein that Synod would decide the issue relating to the continuance of the fifth defendant as Bishop since the Executive Committee of the

Synod was seized of the issue.

(b) The second defendant in the said suit namely the Moderator of CSI, issued a communication on 30.4.2009 stating that the term of office of the

fifth defendant Bishop would come to an end on 1.5.2009, and that he might continue as a caretaker Bishop of CSI Diocese from 2.5.2009 till

such time the Executive Committee of Synod takes a decision as per the interim order passed by the Court dated 29.4.2009.

(c) While the matter stood thus, the fifth defendant in the above suit namely Rt. Rev. Dr. V. Devasahayam filed the instant suit in C.S. No. 423 of

2009 seeking for a declaration that he was entitled to continue to hold the office of Bishop in Madras CSI till he completes the age of 65, and the

letter dated 30.4.2009 issued by the Moderator was contrary to the Constitution of CSI and also sought a permanent injunction restraining the

defendants from interfering with his functioning as Bishop of Madras CSI. In the said suit, the plaintiff has filed the instant applications for the above

said interim reliefs.

(d) The learned Single Judge on enquiry, allowed both the applications. Hence these appeals at the instance of the defendants 1 and 2.

4. Advancing arguments on behalf of the appellants, the learned Senior Counsel Mr. V. Prakash would submit that the appellants are

unincorporated bodies, and hence the suit framed is not maintainable under Order I, Rule 8 of C.P.C.; that the restriction of the tenure of the first

respondent was not merely in terms of such resolution, but on account of the first respondent expressing his willingness to hold the office of bishop

for not more than 10 years; that the said restriction was made on account of health condition of the first respondent; that he was a party to his appointment; that the plaintiff has suppressed the above material facts; that the letter dated 24.4.1999 alleged to have been written by the Moderator to the first respondent herein was ex facie fabricated for the purpose of misleading the Court; that it is pertinent to point out that such an appointment was only after the confirmation by the members of the Executive Committee of Synod; that the same was final and binding on the first respondent; that also the Moderator neither had the power to modify the terms of appointment nor did he do so by virtue of the letter in question; that the first respondent had not sought to take up the matter with the Synod; that the physical fitness and the willingness of the person to accept the office of bishop are two crucial factors to be taken into account for appointment to the said office; that the Synod is clothed with power and discretion to select and appoint a bishop and the post is not merely by election alone; that apart from that, there was no question of retirement in the case of the first respondent; that Synod has power to make rules and pass resolutions and take executive action; that the first respondent had no prima facie case; but the balance of convenience was with the appellants, and irreparable loss and hardship would be caused to them in the event of interim orders being passed against them; that the first respondent had no substantive right to the office after the expiry of the said period; that the first respondent was not entitled to continue till the age of 65 years on account of it being contrary to his appointment for 10 years, and hence the order of the learned Single Judge has got to be set aside.

5. Contrary to the above, the learned Senior Counsel Mr. R. Thiagarajan for the first respondent in his sincere attempt of sustaining the order of the learned Single Judge put forth his submissions.

6. The first contention put forth by the appellants' side that the appellants were not given reasonable opportunity even to file their counter, but the learned Single Judge has made the order hastily cannot be countenanced in view of a memo filed by the appellants' side before the learned Single Judge that the counter filed in M.P. No. 1 of 2009 in OSA No. 135 of 2009 could be taken as the counter for this application, and also the Counsel for the appellants before the learned Single Judge had delivered his

arguments as could be seen from the impugned order.

7. It is not in controversy that before the appointment of the plaintiff as bishop of the Madras Diocese CSI, nominations were called for which

were published and circulated to all the members of the diocese and the nominations were made by the members of the Diocesan Council. The

diocesan council also elected a panel of not less than two and not exceeding four who were actually supported by the majority of the members of

the diocesan council present and voting. After the voting that took place, the Moderator has examined the persons in the panel relating to the

physical fitness to do the duties of the bishop along with two other Christian Medical persons chosen by him. After doing so, the Moderator must

obtain the willingness of the persons so elected to the panel to accept the office of the bishop if appointed. Then the Moderator has communicated

to the General Secretary, the names of the persons elected to the panel by the diocesan council. The Joint Secretary has also taken steps to secure

by public notice the election of those persons to the panel in all churches of the diocese, calling objections if any. Then the result of the election was

submitted to the Board consisting of the Moderator and six members appointed by the Executive Committee of the Synod. Following the same,

the Board has appointed the plaintiff from those elected to the panel by the diocesan council. On appointment as found in Clause 32, the

Moderator informed the General Secretary the name of the plaintiff as appointed which was informed to all concerned. Following the same, the

Executive Committee of the Synod has also confirmed the appointment. The same was also reported to the Moderator. In turn, the Moderator and

the General Secretary have executed the certificate of confirmation in the name of the bishop appointed. The consecration of the plaintiff has also

taken place. The parties are not in controversy as to the above factual position.

8. The only question that arose for consideration is whether the appointment of the first respondent/plaintiff bishop as made above was only for a

period of 10 years ending with 1.5.2009 and thereafter he cannot continue as contended by the appellants' side or he could continue till he attains

65 years of age as contended by the plaintiff bishop.

9. The learned Senior Counsel for the appellants would submit that Rule 12(a) of Chapter V of the Constitution of the Church of South India

stipulates that a bishop shall retire on the completion of 65 years of age; that the use of the words ""shall retire"" was with a specific purpose of

prescribing the maximum or outer limit for holding the office and constituted a bar only to continuing beyond such period in cases where there was

no restriction operating, and it did not mean ""until"" and hence the first respondent bishop was appointed only for a period of 10 years considering

his health condition, and he cannot take shelter under Clause 12(a). On the contrary, the learned Senior Counsel for the first respondent Bishop

would submit that when a Bishop is appointed, the duration of the period would be till the person completes the age of 65. In order to solve the

controversy, it would be more apt and appropriate to reproduce Rule 12(a) as follows:

12(a) Duration of Appointment: The bishop of a diocese shall remain bishop of that diocese until he resign, or accept the charge of another

diocese, or depart permanently from the diocese or be deprived of his charge by sentence of the Court of the Synod, or be adjudged by the

Executive Committee of the Synod to be mentally, physically or otherwise incapable of discharging the duties of his office. A bishop shall retire on

completion of his 65th year of age.

10. It is true that the above clause would abundantly make it clear that a bishop so appointed will have the term of office till the completion of 65th

year of his age. At this juncture, it is to be pointed out that the Synod is the supreme governing and legislative body of the Church of South India.

They are the final authority in all the matters pertaining to the church. Clause 13 of Chapter IX of the Constitution speaking to the powers of the

synod reads as follows:

13. The Synod is the supreme governing and legislative body of the Church of South India, and the final authority in all matters pertaining to the

Church.

Thus it can be well stated that Synod is clothed with powers in respect of all matters pertaining to the church.

11. The next contention put forth by the appellants' side is that the plaintiff bishop having accepted his tenure of office as bishop for a period of 10

years should not be allowed to continue as bishop of Madras diocese for two reasons; that firstly he is estopped from stating that his appointment

was till his completion of 65 years while he has accepted an appointment for a period of 10 years; that secondly he has also enjoyed the benefits of appointment for 10 years; and that under the circumstances, now he should not be allowed to question the validity or otherwise of the appointment after enjoying the benefits of the same. Contrarily it is contended by the first respondent bishop that he was appointed till his completion of the age of 65 as contemplated under the Rule and not for a period of 10 years as contended by the appellants. In the instant case, it is not in controversy that the plaintiff was duly appointed as bishop and also consecrated in the office. Nowhere in the entire Constitution it speaks about the restricted period of 10 years or any period. On the contrary it stipulates under Rule 12(a) ""till the completion of his 65th year"". When the nominations were made or elections conducted, it was also not for a stipulated period; but it should have been only for a period as envisaged under Rule 12(a). In support of the contention, the learned Senior Counsel for the appellants placed reliance on different communications which emerged between the Church of South India and the plaintiff bishop.

12. The minutes of the meeting of the bishop's selection board of Madras Diocese met on 5.4.1999 at 4.00 P.M. at CSI Synod Centre reads as follows:

After preliminary discussion the candidates of the panel were interviewed.

After prolonged consideration, considering all aspects relating to the candidates particularly with regard to health condition of both of them it was unanimously decided to restrict the period of appointment, in the interest of the Diocese for a period of 10 years.

...

After careful consideration it was unanimously resolved to appoint the Rev. Dr. V. Devasahayam and recommend to the Moderator to consecrate him as Bishop of the Diocese of Madras.

13. A letter from the Church of South India dated 11.4.1999 addressed to all the members of the Synod Executive Committee reads as follows:

Rev. Devasahayam has expressed his desire, in writing, to hold the office of Bishop for not more than ten years for reasons that he shared with the Board and the Board has decided accordingly....

14. On 24.4.1999, a letter was addressed by the Moderator and Bishop to Rev. Samuel Jacob, the Secretary, CSI Madras Diocese, which reads

as follows:

The Board, after personal interview and careful study of the two candidates elected to the panel by the Madras Diocesan Council and giving due consideration of the needs of the Diocese, has decided to select Rev. Dr. V. Devasahayam for appointment as the Bishop of Madras Diocese for a period of ten years.

The Synod Executive Committee also has confirmed the above appointment.

I, therefore, hereby inform you and the Diocese that Rev. Dr. V. Devasahayam has been duly selected for appointment as the Bishop of the

Diocese of Madras for a period of ten years. The order of appointment comes into effect from the date of the Consecration.

It is pertinent to point out that a copy of the above letter was addressed to the plaintiff Bishop Devasahayam.

15. The plaintiff Bishop Devasahayam has also attended the Diocesan Executive Committee meeting on the very day i.e., 24.4.1999, as a special

invitee. In the meeting held on 28.8.1999, the minutes of the previous meeting held on 24.4.1999 was read and confirmed by the Executive

Committee.

16. All the above communications would clearly indicate that the Bishop's Selection Board has taken into consideration all aspects relating to the

candidates with regard to their health condition and unanimously decided to restrict the period of appointment and also in the interest of the

diocese, for 10 years. Accordingly, it has made the appointment for only 10 years, and this was also approved subsequently and informed to the

plaintiff bishop, and he also gave his consent in writing. Thereafter, the Synod has issued a certificate of election and appointment of the plaintiff for

the Madras Diocese following which the act of consecration has also taken place as found in the documents.

17. It is true that in both the documents namely the certificate of election and appointment and also the document for consecration, the period of

office of the plaintiff is not mentioned. Equally in the letter dated 9.4.1999 issued by the Church of South India to the members of the Synod

Executive Committee along with the bio-data of the plaintiff Devasahayam and

also the letter dated 28.4.1999 whereby the members of the Synod

Executive Committee have expressed their willingness for the appointment of Devasahayam as the bishop in Madras Diocese, the term of office is not mentioned.

18. The learned Senior Counsel for the first respondent bishop pointing to all the documents would contend that even at the time of appointment,

the period of office was not stated and hence when the plaintiff bishop was appointed, it was only till he attains the age of 65. Insofar as certificate

of appointment and also the document of consecration, one cannot expect the period of tenure of office to be stated therein. At this juncture, it is

pertinent to point out that the board appointed for the purpose of bishop by the Church of South India has restricted the period of tenure as 10

years taking into consideration the health condition of both the candidates and has informed the same to the present bishop, and he has also

consented therefore. Thereupon, he has also been appointed, and his appointment was confirmed in a meeting on 28.8.1999 by the Executive

Committee of the Diocesan. Once the appointment was made only for a period of 10 years and the same has also been accepted by the first

respondent bishop and subsequently confirmed by the Executive Committee of the Synod, now the first respondent bishop who did not make any

murmur earlier, cannot now be allowed to state that his appointment was for a period till 65 years of his age and that too after the period of 10

years is over. (emphasis supplied)

19. Now the learned Senior Counsel for the first respondent bishop in support of his contentions took the Court to a letter dated 24.4.1999

written by the Moderator to the plaintiff bishop which reads as follows:

I acknowledge the receipt of your letter regarding your order of appointment limiting your term of episcopal office for a period of ten years. In

consultation with the Synod lawyers, I am to inform you that the retirement of Bishops is governed by the Constitution of the Church of South

India, i.e., retirement at the completion of 65 years of age and that the term of office cannot be limited by any order contrary to the provision of the

Constitution.

Of course the Bishop is free to lay down office at any point of time before retirement on health grounds. I sincerely pray that the God Almighty to

give you good health to complete your full term. I Invite you to arrange for the consecration retreat in Chennai with the available senior bishops as I

am not free to lead the retreat. Be assured of my prayers as you and your wife prepare yourselves for this high calling.

20. On the contrary it was contended by the learned Senior Counsel for the appellants that the said letter was a fabricated one in order to suit the

convenience of the first respondent bishop. The letter relied on by the first respondent's side cannot be acted upon for the reason that on the very

day i.e., 24.4.1999, the CSI has addressed a communication to its Secretary wherein it has specifically stated that Devasahayam has been duly

selected for appointment as bishop for a period of 10 years and it has come into effect from the date of the consecration. This communication is

not disputed and it has also emanated from the CSI. While so, there cannot be another letter on the very day namely 24.4.1999 written by the

Moderator to the plaintiff bishop that his retirement was at the completion of 65 years of age and his term of office cannot be limited by any order

contrary to the provisions of the Constitution. Hence such a letter could not have been written the very day. That apart, the Moderator cannot

write such a letter. Even assuming that the Moderator has written such a letter, during that time he could not extend the period stating that the

retirement will be at the completion of 65 years of age since it was contrary to the earlier appointment and confirmation by the Synod. At this

juncture, it is pertinent to point out that the said letter dated 24.4.1999 relied on by the first respondent/plaintiff bishop, does not refer to any

decision of the Synod. It remains to be stated that only the Synod has got the power to rectify or set right things if any defect is noticed and not the

Moderator.

21. It is true that on 28.4.1999, the Synod Secretariat, CSI, has given the instrument of election and appointment of the Rt. Rev. Dr. V.

Devasahayam for Madras Diocese. But it remains to be stated that it was an instrument for election and appointment. The election and

appointment referred to in that document would refer to the earlier appointment of 10 years originally accepted by the bishop and confirmed by the

Synod in its earlier proceedings. Had the contention of the first respondent bishop that his appointment was upto 65 years of his age and not for 10

years been true, the Synod should have clarified and set right the situation but not done so. All the above would clearly indicate that the Selection

Board considering the health condition of both the candidates restricted the period as 10 years and out of these two persons, Devasahayam was

selected, and he was also informed about the same and also the tenure of his office. The first respondent bishop has accepted the same and

subsequently the appointment was made and confirmed by the Synod of CSI. Having accepted the appointment for a period of 10 years, now he

cannot be permitted to say that he would continue till 65 years of age taking shelter under Rule 12(a). (emphasis supplied)

22. The Bench had an occasion to consider the matter in OSA No. 135 of 2009 and has made a final order on 9.6.2009. While disposing of the

said appeal, the Bench has observed that there would be an order of status quo till 26.5.2009 and it was made further clear that till the

appointment is made by the competent authority, the appellant therein who has been continuing as Bishop is entitled to continue and the same order

would continue till further orders are passed by the learned Single Judge. Pursuant to the above orders of the Bench, the learned Single Judge has

passed the common order which is the subject matter of challenge in this appeal. Even at this stage, no appointment was made by the competent

authority namely the Synod. As per Rule 16 of Chapter V of the Constitution, when the post of bishop becomes vacant, the charge and

administration would devolve upon the Moderator who should administer with full jurisdiction until a new bishop is appointed. In the case on hand,

by way of interim arrangement, the Moderator has permitted the first respondent bishop to continue as a caretaker bishop in the circumstances.

Though the first respondent has not made out a prima facie case to continue him as Bishop, in view of the vacancy that is created, the first

respondent bishop has got to be permitted to continue to be the caretaker bishop of the Madras Diocese till the new appointment is made by the

competent authority.

23. Above all, the suit is laid against the Executive Committee of the Synod, Church of South India, the first defendant and against the Madras

Diocesan Council CSI as the third defendant, and the reliefs are sought against those defendants. It is not in controversy that those defendants are

unincorporated bodies and are not legal persons. Thus the suit is filed against the Christian community represented by the defendants who are

unincorporated bodies, and hence the suit itself is not maintainable without getting permission under Order 1 Rule 8 of the Code of Civil

Procedure. For instituting a suit in a representative capacity or filing a suit against a representative body, the procedure under Order I Rule 8 of

CPC has to be complied with. The Apex Court in a case reported in Kalyan Singh Vs. Smt. Chhoti and Others, has held that for a representative

suit, the court's permission under Order 1 Rule 8 of the CPC is mandatory. Admittedly, in the instant case, no such permission was sought for. So

long as no permission was either applied or granted, it cannot be stated that the suit is in order. As such the suit framed is not maintainable.

24. In the result, both the original side appeals are allowed setting aside the order of the learned Single Judge and leaving the parties to bear their

own costs. The first respondent/plaintiff is permitted to continue as caretaker bishop of the Madras Diocese till the new appointment is made by

the competent authority, as per the observations made in this judgment. It is made clear that any of the observations made above will not stand in

the way of Synod making new appointment. Consequently, connected MPs are closed.