

W.P.No.30472 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 30.11.2023

DELIVERED ON : 29.02.2024

CORAM

**THE HON'BLE Mr.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE Ms. JUSTICE P.T.ASHA
AND
THE HON'BLE Mr.JUSTICE N.SENTHILKUMAR**

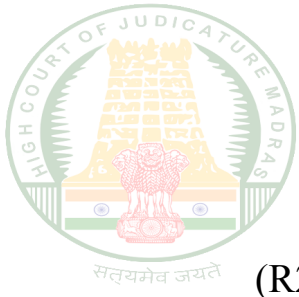
W.P.No.30472 of 2022
and
W.M.P.Nos.29904, 29906 and 31031 of 2022

D.Bright Joseph

...Petitioner

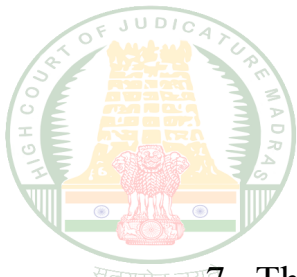
Vs

1. Church of South India (CSI)
Synod Secretariat,
No.5, Whites Road, Royapettah,
Chennai – 600014,
Represented by its General Secretary
2. Church of South India Trust Association (CSITA)
Represented by its Honorary Secretary,
No.5, Whites Road, Royapettah,
Chennai 600 014.



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vide order dated 17.11.2022 made in W.P.No.30472 of 2022
by RSKJ)

3. The Most Rev.A.Dharmaraj Rasalam,
Moderator,
Synod Secretariat,
No.5, Whites Road, Royapettah,
Chennai – 600014.
4. Rt. Rev.Reben Mark,
Deputy Moderator,
Church of South India, (CSI),
Synod Secretariat,
No.5, Whites Road, Royapettah,
Chennai 600 014.
5. Adv.C.Fernandas Rathina Raja,
General Secretary,
Church of South India, (CSI),
Synod Secretariat,
No.5, Whites Road, Royapettah,
Chennai 600 014.
6. Prof. C.Fernandas Rathina Raja
General Secretary,
Church of South India, (CSI),
Synod Secretariat,
No.5, Whites Road, Royapettah,
Chennai 600 014.



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7. The Registrar of Companies,
Block No.6B Wing, 2nd Floor,
Shastri Bhawan, 26, Haddows Road,
Chennai 600 034.

[R7-struck off from the array of party respondents
vide order dated 28.11.2022 made in
W.P.No.30472 of 2022 by RSKJ)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 3 to 6 from functioning as office bearers of the respondents 1 and 2 institutions and consequently appoint a former Judge or Judges of this Hon'ble Court as Administrator (s) for managing the affairs of the respondents 1 and 2 and to conduct the election for the office bearers as well as the executive committee of the CSI Synod for the term of three years commencing from 14.01.2023 in accordance with the constitution of the 1st respondent and its constituent Dioceses within a time to be fixed by this Court.

For Petitioner : Mr.S.Thankasivan

For Respondents : Mr.V.Prakash
1 and 5 Senior Counsel assisted by
Mr.Adrian D.Rozario

For Respondent-2 : Struck off vide Court order
dated 17.11.2022.



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For Respondents 3,
4, and 6 : No Appearance

For Respondent 7 : Struck off vide Court order
dated 28.11.2022

ORDER

(The Order of the Court was made by **P.T.ASHA,J**)

This writ petition is placed for our consideration on account of the divergent views taken by two division benches of our Court regarding the maintainability of a writ petition against the Church of South India.

2. The Division Bench by its order dated 03.04.2014 in W.A(MD) Nos.212 and 335 of 2014 had upheld the order passed by the single Judge allowing the vacate injunction petition filed by the respondents and dismissing the petitions seeking injunction and ordering restitution ante; i.e; the stage prior to the passing of the interim order. The petition to implead proposed parties was also allowed. The Division Bench had set out the question for consideration as follows:-



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“Whether the learned Judge was right in ordering restitution while dismissing the writ petition”

The Bench upheld the order and has issued directions for the conduct of the election. Thereby the Bench had given its stamp of approval to the invocation of the provisions of Article 226 of the Constitution of India against the Church of South India, the first respondent herein.

3. Another Division Bench of this Court in its judgment dated 30.05.2017 in W.A(MD) No.540 of 2017 has observed as follows:

“15.The diocese is a private body but not discharging any public duty. The appointments of the staffs of the institution by the diocese and receiving funds from the government under minority aided schemes are different from the internal election dispute. In the present case the petitioner is seeking a prayer to issue Writ of Mandamus by directing election to the diocese is



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not at all maintainable and no such direction can be given to the private individual by invoking extraordinary power conferred to this court 12 under Article 226 of the Constitution of India. The diocese is a private body not discharging public duty and internal disputes between two groups with regard to the administrative dispute cannot be resolved in this writ petition.”

This Division Bench categorically held that a writ would not lie against the CSI.

4. Thereafter a learned Single Judge of this Court in a Batch of writ petitions, W.P(MD) Nos.21134 of 2017 etc., by order dated 05.08.2019 held that since the Diocese was running several institutions, hospitals and Aided institutions etc, they were discharging public functions. A dispute relating to these were amenable to the writ jurisdiction. The learned Judge had however clarified that matters relating to the elections to the Diocese Council and the constitution of



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the various branches of committees of the CSI falls outside the scope of the writ jurisdiction. The learned Judge had appointed an Administrator and issued a slew of directions to the Administrator for running the Diocese.

5. This order of the learned single Judge has been upheld by another Division Bench by its order dated 25.02.2020 in the batch of writ appeals. W.A(MD)Nos.878 of 2019 etc.,. The Bench upheld the order by observing that the orders of Court would directly affect the interests of hundreds of educational institutions and they had upheld the appointment of the Administrator and the directions issued to them. Thereby this Division Bench has also allowed the institution of a writ petition against the first respondent herein.

6. Therefore, the short question placed for reference before us is:

“Would a writ petition invoking the jurisdiction of this Court under Article 226 of the



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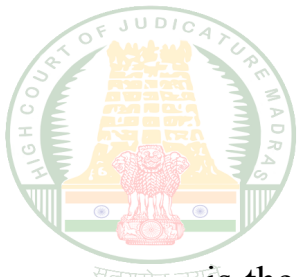
constitution of India lie against the CSI which is only a private body and if so to what extent / circumstances such writs would lie.”

7. Before venturing to answer the reference, it would be useful to briefly touch upon the facts of the writ petition that has given rise to this reference.

8. The writ petitioner, who is the elected Diocesan Council member of the Madras Diocese in which capacity he had functioned for several terms and also a member of the first respondent-CSI Synod Council, has filed this writ petition for conducting and streamlining the electoral process as also the administration of the first respondent.

FACTS OF THE CASE:

9. The facts which have necessitated the filing of the writ petition



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is the malaise in the management of the first respondent-CSI Synod and the 2nd respondent Association. The 2nd respondent, however, appears to have been struck off from the array of the parties by order of the Court made on 07.11.2022. The writ petitioner would submit that in the recent past the management of the several thousands of educational institutions and associations of the 1st respondent and its dioceses were deteriorating since persons who lack integrity and value have penetrated into the management through a manipulated election processes. As a result of this. the election to the electoral college was also not as per procedure. The petitioner would submit that respondents 3 to 6 were attempting to supersede the electoral bodies of Dioceses with a view to tamper the composition of the electoral college by creating a favourable electoral college for the forthcoming election of the 1st respondent Synod. The Bishops of 24 dioceses are the valuable voters in the electoral college who elect the members of the CSI Synod Council. Now, the respondents 3 to 5 are trying to manipulate the election process by introducing an amendment extending the age of retirement of the Bishop and Presbyters.



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The petitioner would submit that the constitution of the first respondent does not permit such amendment for extension of age. The petitioner would submit that the heads of Church of South India, CSI Synod, the second respondent Association and the Bishop of South Kerala Diocese are highly corrupt persons and serious allegations of fraud, cheating and misappropriation are pending against the third respondent. By extending the age of retirement these persons would ensure their continued participation in the electoral process.

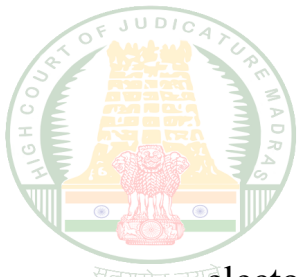
10. It is also the allegation of the petitioner that the fifth respondent who is an Advocate enrolled with the Bar Council of Tamil Nadu and Puducherry was appointed as the General Secretary of the first respondent which is a salaried full time employment. The third respondent, who is officiating as Bishop of South Kerala Diocese, in the guise of procuring seats in Dr.Somervell Memorial CSI Medical College in Karakonam, has collected several crores of rupees from the parents of the aspiring students. The third respondent did not refund the money



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collected which prompted the parents to register FIRs from the years 2019 to 2021. A supervisory committee for the medical education headed by Justice R.Rajendra Babu, a former Judge of Kerala High Court who is monitoring the entrance to medical colleges had gone into these complaints and recommended to the Government of Kerala to initiate criminal proceedings against the third respondent. The petitioner would submit that despite this damning report, the third respondent is continuing to hold the powerful post of Moderator. The third respondent is misusing the men and machinery of the 1st and 2nd respondent institutions to continue to occupy the above post and in this endeavour, he has the active support of respondents 4 to 6. These persons are also manipulating the election, selection and appointment of Bishops in the various dioceses. They are also superseding the elected committees and appointing administrative Committees of their choice to ensure control over the several educational institutions being run by these Dioceses. By controlling the election of Bishops and superseding duly elected committees the respondents 3 to 6 are effectively manipulating the



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electoral college for the Synod Executive and Office bearers. Further, there are several litigations pending against the dioceses as well as these respondents. The petitioner would submit that by conducting a farce of an election, the tainted members continue to hold office, and they are dabbling in the affairs of the educational institutions being run by respondents 1 and 2. Therefore, he has come forward with the above Writ Petition.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

11. Mr.S.Thanka Sivan, learned counsel for the petitioner would submit that the reason for filing the writ petition has been narrated in paragraph Nos.8 and 9 of the writ petition. He would further submit that the constitution of the Church of South India, Chapter VI provides the procedure for Election, Appointment, Consecration and Installation of Bishops. He would further submit that in paragraph No.18, the petitioner



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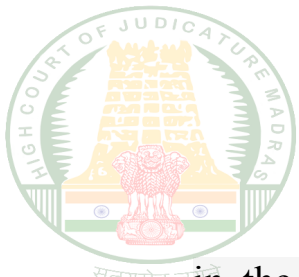
has set out the facts as to how the electoral process for electing the office bearers of the first respondent has to commence within a short period of time since the term of present office bearers of respondents 3 to 6 was to end on 13.01.2023. Chapter XI of the constitution of CSI Synod Rules contemplates the procedures for election. It has also been set out how Dioceses where these respondents have superseded the elected bodies would have no representation in the CSI election process for Synod Executive and Office bearers. All these illegal supersessions of elected bodies have been done in order to manipulate the electoral bodies to ensure they are appointed as Office bearers. Once respondents 3 to 6 are reelected, they would be involved in the management and administration of the various schools, colleges and hospitals being run by the respondents 1 and 2. He would submit that the learned Single Judge in W.P(MD)Nos.21134 of 2017 etc., had held since the Diocese was running several institutions, hospitals, aided institutions etc., they were discharging the public functions and disputes relating to these activities would definitely partake the character of a public duty and therefore, this



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activity would be amenable to the writ jurisdiction. The order of the learned Single Judge has been upheld by another Division Bench in W.A(MD) Nos.878 of 2019 etc., He would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2005) 4 SCC 649 [Zee Telefilms Ltd and Another Vs. Union of India and Others]*** and would draw the attention of this Court to paragraphs 31 to 36, 47, 136 and 252. He would also rely on the judgment of the Hon'ble Supreme Court reported in ***(2023) 4 SCC 498 [St.Mary's Education Society and Another Vs. Rajendra Prasad Bhargava and others]*** with particular reference to paragraph No.75 where the Hon'ble Supreme Court has observed that “*an application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions, such public duty may be cast upon them either statutory or otherwise. If it is otherwise, then it must be shown that the body or the person owes that duty or obligation to the public involving a public law element*”. The Hon'ble Supreme Court had observed that educational institutions perform several functions touching upon various facets of public life and



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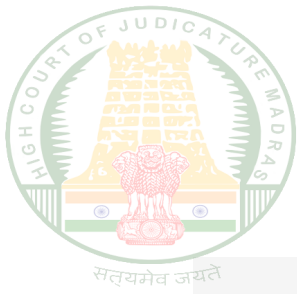
in the societal sphere. Since these functions would fall within the domain of a "public function" or "public duty", it would be open to challenge under [Article 226](#) of the Constitution. The learned Judges, however added that the actions and decisions taken by the management which falls exclusively within the ordinary contract of service would not be amenable to the writ jurisdiction. He would rely upon another judgment of the Hon'ble Supreme Court in *(1989) 2 SCC 691 [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs.V.R.Rudani and Others]* where the Hon'ble Supreme Court from paragraph No.17 onwards was considering the award passed by the Chancellor in a dispute between the University Area Teachers Association and the University regarding the implementation of pay scales. The award of the Chancellor was accepted by the State Government as well as by the University. The Academic staff, who were aggrieved by the fact that they have not received the terminal benefits, had moved the High Court by way of a writ petition. The High Court had passed orders in the above writ petition, which was



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challenged before the Hon'ble Supreme Court. The maintainability of the writ against the management of the College was the first ground of challenge. The argument was that the management of the college was a trust not amenable to the writ jurisdiction since it was a private institution. The Hon'ble Supreme Court observed that the appellant-trust was managing the affiliated college to which public money was paid as Government aid and this played a major role in the control, maintenance and working of educational institutions. The aided institutions were subject to the rules and regulations of the affiliating University and the activities were closely supervised by the University authorities and therefore, it could not be stated that the employment in such institution is devoid of any public character. The Hon'ble Supreme Court further observed that [Article 226](#) confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English Law. Under [Article 226](#), a writ can be issued to "any person or authority". Ultimately, the appeal filed by the management was dismissed. The order of the High Court was upheld.



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SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR RESPONDENTS 1 AND 5.

12. Mr.V.Prakash, learned senior counsel appearing for Mr.Adrian D.Rozario, learned counsel for respondents 1 and 5 would submit that the very relief sought for in the writ petition is with reference to the election to the council. The constitution of the first respondent clearly sets out the procedure that has to be followed in this regard. He would submit that the writ petition has been filed by a member who is not an affected party. The writ petitioner does not make out any public need nor have the averments setting out the public character of the 1st respondent pleaded. It is also the argument of the learned senior counsel that no fundamental rights have been breached thereby giving power to this court to exercise jurisdiction under Article 226. He would draw the attention of this Court to the judgment of the Constitution Bench reported in *(2023) 4 SCC 1 [Kaushal Kishor Vs.State of Utter Pradesh and Others]*. This judgment



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arose on a reference by a 3 member Bench in a writ petition filed under Article 32 of the Constitution of India seeking transfer of a trial of a POCSO case outside the State and for registering a complaint against the then Minister for Urban Development of the Government of U.P. for making statements outraging the modesty of the victims. There were two other special leave petitions which arose out of a judgment of the Division Bench of the Kerala High Court dismissing the writ petitions filed in the public interest, questioning the remarks made by the then Minister for Electricity in the State of Kerala and stating that the statements were highly derogatory of women. All three cases were placed for the consideration of the Constitution Bench. The Bench had formulated 5 questions and it is the second question that the learned senior counsel would refer to, which reads as follows:



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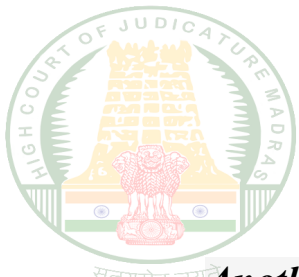


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“Can a fundamental right under Article 19 or 21 of the Constitution of India be claimed other than against the State or its instrumentalities.”

13. The said question has been answered in paragraphs 82 and 83 where the answer was that a fundamental right under [Article 19](#) or 21 of the Constitution of India can be enforced even against the persons other than the ‘State’ or its instrumentalities. However, in the very same judgment, the Hon'ble Supreme Court would refer to the sole dissenting judgment from paragraph 268 where the learned Judge had observed that *“any question regarding infringement of the fundamental rights under Articles 19/21, by a private entity, involves disputed questions of fact which cannot be determined in a writ proceeding”*. He would submit that in the instant case the grievance of the petitioner is only with reference to the conduct of the election, which has already been challenged in a suit C.S.No.7 of 2023 where the plaintiff seeks directions from the Court to frame a scheme. He would also rely upon the judgment reported in ***(2019) 16 SCC 303 [Ramakrishna Mission and***

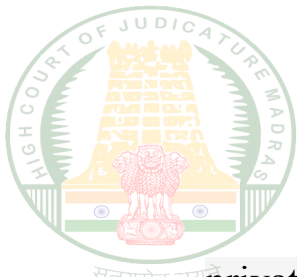
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Court was considering the writ petition instituted by an employee of the appellant, Ramakrishna Mission to allow him to continue in service till he completes thirty-five years of service. The learned single Judge had allowed the writ petition. Though the appellants had raised the issue of maintainability, the learned single Judge observed that the appellant would fall within the meaning of Article 12. This order was challenged by Ramakrishna Mission in a writ appeal before the Division Bench of Gauhati High Court where also it had failed. Thereafter they had approached the Hon'ble Supreme Court. The learned Judges of the Hon'ble Supreme Court observed that the issue before the Court was whether the functions performed by the hospital were public functions, on the basis of which a writ of mandamus would lie. The issue was answered by stating that the activities undertaken by the Mission, which is not a non-profit entity are not closely related and performed by the state in its sovereign capacity, nor do they partake of the nature of a public duty. The learned Judge had observed that contracts of a purely



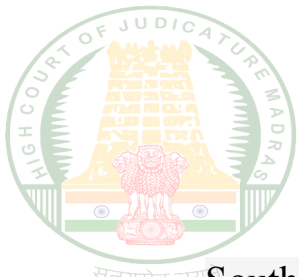
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private nature would not be subject to writ jurisdiction merely because they are structured by statutory provisions. The only exception to this principle arises in a case where the contract of service is governed or regulated by a statutory provision like Industrial Disputes Act, etc. Therefore, the learned senior counsel would submit that the respondents had its own bye-laws for conducting the election and also the remedy available to an aggrieved person and since there is an alternative remedy also, the writ petition would not lie.

ANSWER TO THE SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR RESPONDENTS 1 AND 5.

14. Answering the submissions of the learned senior counsel for respondents 1 and 5, Mr.Thanka Sivan, the learned counsel for the petitioner would submit that respondents 1 and 2 are not separate bodies and they function under the Synod. The powers of Synod has been given in Clause 13 of Chapter IX of the Constitution of the Church of

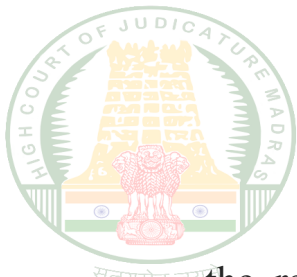


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South India. He would submit that the educational agency which manages and administers the educational institutions recognized by the state consists of the members of the Diocesan Council. The Bishop is appointed by the Synod, which is all powerful. Therefore, the members of the educational agency are the members of the Diocesan council and since the educational agency is discharging a public function and the body is not elected in keeping with the rules or if persons governing the council are guilty of acts of misfeasance, then a writ petition under Article 226 would definitely be maintainable.

DISCUSSIONS:

15. From the aforesaid submissions, this Bench has to first consider whether the functions being performed by the respondents 1 and 2 would constitute a public function/public duty thereby making them amenable to the writ jurisdiction, though the second respondent has been struck off from the array of parties. Before proceeding to answer

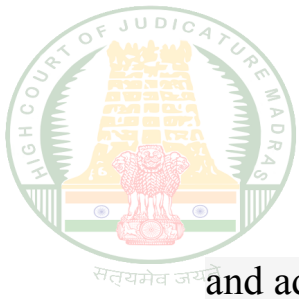


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the reference, it would be apposite to understand what constitutes a public duty. In simple terms, public duty would mean a duty in discharge of which the State, Public or the Community at large has an interest. Likewise, a public function would generally mean a function for the general public serving the public good. Therefore, it becomes necessary to examine as to how the Courts have applied the public function / public duty test. The preamble which is the soul of our constitution has promised to secure to all its citizens justice liberty, equality and fraternity. The constitution has to evolve with changing times to secure this justice and the hallmark of our constitution is its flexibility.

16. By the Eighty – Sixth Amendment, Article 21-A was inserted into the Constitution of India to provide compulsory education to all children in the age group of six to fourteen as a fundamental right. Article 30 of the Constitution guarantees rights to minorities to establish

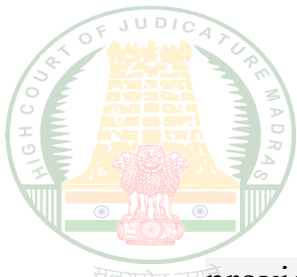


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and administer educational institution. The judgment rendered by eleven Judges of the Hon'ble Supreme Court in the case of *TMA Pai Foundation 2002 (9) SCC 481* clarified that the right under Article 30(1) of the Constitution of India is not absolute and regulatory measures for ensuring educational standards and maintaining minimal control is permissible. However, the statutory conditions of affiliation and recognition have to be followed in the case of unaided institutions. As regards aided institutions, the institution has to comply with the constitutional mandates.

17. The above discussion is necessitated since the bulwark of the petitioner's argument is that by having persons with vested interests controlling the educational institutions being run by the first respondent the quality of education has been impacted and therefore the invocation of Article 226 of the Constitution of India is very much in order as



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providing quality education has been included as a fundamental right into the constitution.

18. The question which arises is whether a writ petition would lie against all actions of the first respondent. The first respondent is a United Protestant Church in India formed by a Union of a number of Protestant denominations in South India after this Country had attained independence. The administration and the management of the Church is governed by the constitution of the C.S.I. The first respondent runs 2300 schools, 150 colleges and 104 hospitals in South India. For running of its hospitals, the first respondent-Synod requires certain licenses and they are also bound by statutory regulations. Since the functions of the first respondent not only includes worship and theology but also encompasses education and health care would the first respondent be amenable to the jurisdiction of the Court under Article 226 of the Constitution of India?. It would therefore be necessary to touch upon



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the powers and functions of the second respondent. The second respondent was incorporated under the Indian Companies Act, 1913 on 26.09.1947. The Memorandum of Association of the second respondent provides as its objects the following:

“b) To aid and further the work of the Church of South India in those parts of India where the Church of South India may function (hereinafter and in the Articles of Association called the said area) and for that purpose to do and carry out or assist in doing or carrying out all such matters and things as are likely to promote the objects of such Church and in particular to assist pecuniarily or otherwise all or any of the societies, clubs, trusts, organizations, schools, colleges, ashrams, hostels, boarding houses, hospitals, dispensaries, industries, homes, refugees and other charities now existing or hereafter to exist in connection with the said Church within the said area whether the same are confined to the said area or not. The Association shall not act outside the said area.

(c) To acquire sites for buildings and to build alter or enlarge such buildings and to maintain and endow



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churches, chapels, churchyards, burial grounds, schools, colleges, ashrams, hostels, boarding houses, hospitals, dispensaries, church and mission halls, prayer houses, residences for ministers, doctors, schoolmasters and schoolmistresses and other workers, refugees, homes, industrial establishments and other buildings to be used in connection with the work of the said Church within the said area.”

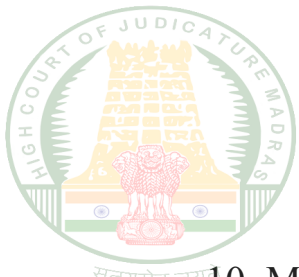
The Articles of Association of the second respondent sets out the membership of the second respondent as follows:

MEMBERSHIP

4. The first members of the Association shall be:

1. The Venerable Archdeacon
J. White,
2. Mr.L.D.Miller,
3. Mr. C. L. Lucas,
4. Rev.L.J.Thomas
5. Mr. P. K. Monsingh, 6. Rev.A.M.Payler,
7. Rev. T. R. Foulger,
8. The Venerable Archdeacon P.C.Kora,
9. The Venerable Archdeacon
E. M. Spear,

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10. Mr.M.G.Jesubatham,
11. Rev.S.J.Savarirayan,
12. Rev.B.C.D.Mather,
13. Rev. V.J.Chelliah,
14. Rev. P. Gurushantha,
15. Rev.F.Whittaker,

who shall remain members until replaced by members elected by the Synod of the Church and thereafter members shall be such persons as shall be elected as members by the Synod of the Church The Moderator, Deputy Moderator, General Secretary and the Treasurer of the Synod of the Church shall be ex-officio members.

The Moderator of the Synod of the Church of South India, Ex- officio is also the Ex-officio Chairman of the Association, the General Secretary of the Synod of the Church of South India, Ex-officio is also the Ex-officio Secretary of the Association and the Treasurer of the Synod, Church of South India, Ex-officio is also the Ex-officio Treasurer of the Association,



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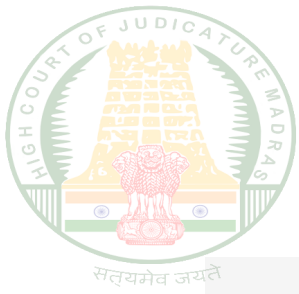
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5. *One third of the members shall retire at each meeting of the Synod of the Church but shall be eligible for re-election. The one-third to retire shall be those who have been members longest since last elected as members. The Synod shall decide at its first meeting the order of retirement of the members elected at that Meeting. A member otherwise shall cease to be a member of the Association.(a) in the case of first members until replaced by members elected by the Synod of the Church;*

(b) on his retirement to be signified in writing;

(c) on his absence from India for a period of twelve consecutive months.

From out of these members, the Committee is formed as provided under Article 6 and 7. It is the members of this Committee who form the educational Agency. Therefore, the petitioner has filed the above writ petition and this Bench is called upon to determine whether the respondents 1 and 2 are amenable to the writ jurisdiction.



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19. A brief insight into the development and the strides that Courts in India have made in the exercise of their jurisdiction under Article 226 of the Constitution of India has to be necessarily delved upon. Article 226 of the constitution would read as follows:

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

•(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or



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authority or the residence of such person is not within those territories.

•(3)....

•(4) *The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.*

The Scope of this article has been expounded in the decision of the Hon'ble Supreme Court authored by the ***Justice Subba Rao in Dwarka Nath Vs Income Tax Officer*** reported in ***1965 SCC Online SC 61 = AIR 1966 SC*** as follows:

“4.....This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative

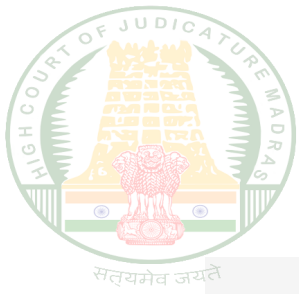


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writs as understood in England; but the scope of those writs also is widened by the use of the expression “nature”, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”



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20. Article 32 of the Constitution of India empowers the Supreme Court to enforce the rights conferred in Part III of the constitution viz., the enforcement of Fundamental rights for which purpose sub Clause 2 of Article 32 empowers the Hon'ble Supreme Court to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, quo warranto and certiorari as may be appropriate. Under Sub Clause 3, the parliament can empower any other Court to exercise the powers conferred on the Supreme Court under Sub Clause 2 within its local jurisdiction. Unlike Article 32, Article 226 uses the language “issue directions, orders or writs to any Government, authority or person”.

21. Therefore, borrowing the language used by the Hon'ble Supreme Court in *Dwarka Nath Vs Income Tax Officer*, the term “any person or authority” used in Article 226 requires a liberal interpretation where such person or authority performs a public duty. The scope of mandamus is determined by the nature of duty to be enforced, rather than



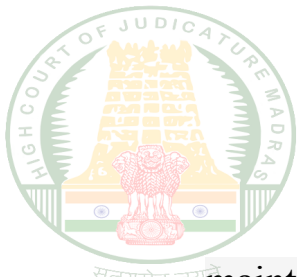
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the identity of the authority against whom it is sought to be enforced. In the judgment of the Hon'ble Supreme Court reported in *(1997) 3 SCC 571 [K.Krishnamacharyulu Vs. Sri Venkateswara Hindu College of Engineering]*, the Hon'ble Judges had held that private institutions cater to the need of providing educational opportunities. There is an element of public interest. The State has an obligation to provide facilities and opportunities to people to avail their right to education. The Hon'ble Supreme Court held that, taking note of the element of public interest created and the institution catering to this element, a teacher employed in such an institution is entitled to avail of the remedy under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the judgment reported in *1999(1) SCC 741 [U..P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey]* had held that a writ petition is maintainable against the society as it is created under an Act. In the judgments reported in *(2004) 2 SCC 150 [Union of India v. S.B. Vohra and Others]* and *2001 SCC OnLine Bom 887 [D.S. Veer Ranji v. Ciba Specially Chemicals(I) Ltd and Others]*, dealt with issues that fall



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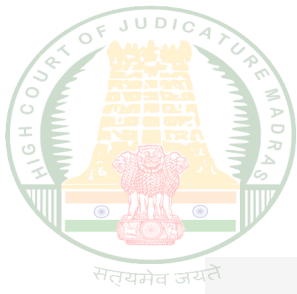
within the realm of public duty. In the judgment of the Hon'ble Supreme Court reported in *(2005)6 SCC 657 [Binny Ltd and Another Vs. V.Sadasivan and Others]* had laid down a triple test for arriving at a conclusion as to whether a person or authority is performing a public duty. The Division Bench of the Delhi High Court has also dealt with the same issue in an unreported judgment *[Centre for Policy Research Vs. Brahma Challaney and Others]*. The judgment of the Hon'ble Supreme Court reported in *1989 (2) SCC 691 [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs.V.R.Rudani and Others]* appears to be an off quoted judgment. In the aforesaid judgment, the Hon'ble Supreme Court had held that the appellant trust was managing an affiliated college to which public money was paid and since their activities were being closely supervised by the University, they were discharging a public duty. Therefore, they had observed that the employment in such institutions would not be a devoid of any public character and held that a writ under Article 226 of Constitution of India was very much



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maintainable. They had observed that Article 226 of the constitution of India gave the wider powers to the Courts in India than the Courts at England. The judgment of the Hon'ble Supreme Court reported in **2005 (4) SCC 649 [Zee Telefilms Ltd and Another Vs. Union of India and Others]**, which has been referred to by the learned counsel for the petitioner, considered the constitutional development in the interpretation of Article 12 and observed that the constitution should be interpreted in the light of the whole experience and not merely on the state of law at the commencement of the constitution. The Bench observed that Games and Sports had been included as state function in the seventh schedule of the constitution. The learned Judges observed that sport is considered to be a part of education (within its expanded meaning) and a separate ministry of Youth Affairs had also been created. Therefore, they had observed that these are public functions and if there is any constitutional or statutory obligation it would be subject to judicial Review under Article 32 and 226 of constitution of India. This judgment has expanded the scope of public duty to include “*sports*”.



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22. In the judgment of the Hon'ble Supreme Court in the case of ***St.Mary's Education Society and Another Vs. Rajendra Prasad Bhargava and others*** reported in ***2023 (4) SCC 498***, the question was whether a writ petition under Article 226 of the Constitution of India would be maintainable against a private unaided minority institution. The learned Judges had posed the following question to themselves.

“Even if a body performing a public duty is amenable to writ jurisdiction are all its decisions subject to judicial review or only these decisions which have a public element therein can be judicially reviewed under the writ jurisdiction?”

The learned Judges observed that the appellant was a registered society running an educational institution founded by a group of French Catholic Nuns in 1893. The school had absolutely no governmental control over



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its administration and functioning. The school was affiliated to the Central Board of Secondary Education (CBSE). After discussing the CBSE's Affiliation Bye laws, the Bench observed that the CBSE was itself a society registered under the Societies Registration Act and schools affiliated to it is not a creature of the statute and hence not a statutory body. After discussing the march of law with reference to judicial review under Article 226 of the Constitution of India observed as follows in paragraph 43.

“43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.”

Ultimately, the learned Judges has summed up their analysis as follows:

“75.1. An application under Article 226 of the



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Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or



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the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the



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matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

23. From the conspectus of the above principles and judgments



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which describe a public duty, it is amply evident that the respondent apart from its ecclesiastical functions, is running and managing various schools, colleges and hospitals. The respondent is definitely discharging the public function and if any action taken by them which is detrimental to the discharge of this duty, a writ petition would definitely be maintainable. Unlike, Article 32 of the Constitution of India any person even if he is not a person aggrieved can invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner is aggrieved by the fact that respondents 1 and 2, by manipulating the electoral process are nominating persons of questionable character, especially against whom criminal proceedings have been directed. Further, an amendment to increase the age of superannuation has been put in place to ensure that the persons now in management can continue for a further period unopposed. The activities of such persons would seriously impair the standards of education as also the institutions. Therefore, taking note of the fact that it is these persons who constitute the educational agency, the writ petition is maintainable.



24. To summarize the issue now in reference, it can be stated that:

(i) the respondents 1 and 2 are running 2300 schools, 150 colleges and 104 hospitals in India. Therefore, the public duty that they discharge falls within the contours of Article 21 and 21A of the Constitution of India.

(ii) The Courts have emphasized that educational institutions which nurture and develop young minds should ensure quality education and high standards of integrity to the persons passing through their institutes. Therefore, persons administering and managing these institutions should be above board.

(iii) Since the educational institutions run by respondents 1 and 2, both aided as well as unaided, are



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bound by statutory regulations of varying degrees, they are amenable to the writ jurisdiction. Any act of the management who are in administration of these institutes / hospitals likely to bring down the standards of both education as well as medical services can be challenged by any person invoking the rights under Article 226 and in that sense, respondents 1 and 2 would fall within the category of any person or authority as described under Article 226 of the Constitution of India.

(iv) The educational agency of the institutions run by the first respondent is the Synod and the Constitution of the Synod has a direct impact on the quality and standards of the educational institutions/hospitals. Therefore, any act impairing / impacting the process of electing the Synod would have a direct impact on the quality and standard of these



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institutions/hospitals.

(v) Apart from running educational institutions, respondents 1 and 2 are also maintaining churches and discharging functions of the clergy. These functions are outside the scope of judicial review under Article 226 of the Constitution of India.

(vi) A person aggrieved by the acts of respondents 1 and 2 relating to the above can definitely move this Court under Article 226 of the Constitution of India to ensure the due compliance of this public duty.

25. Therefore, the writ petition against respondents 1 and 2 who has been struck off, is maintainable where the action of these respondents which has a direct impact on the educational institutions/hospitals being run by the respondents.



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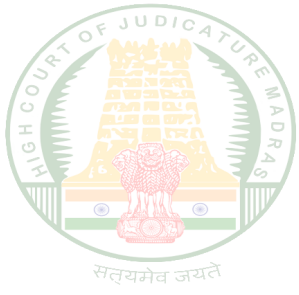
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26. In fine, the reference is answered as stated in paragraph 24.

[R.S.M.J] [P.T.A.J] [N.S.J]

29.02.2024

Index : Yes/No
Speaking order/non-speaking order
srn



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R.SUBRAMANIAN.J,
AND
P.T. ASHA.J,
AND
N.SENTHILKUMAR.J,

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and

W.M.P.Nos.29904, 29906 and 31031 of 2022

29.02.2024