

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE T.R.RAVI**

**TUESDAY, THE 10<sup>TH</sup> DAY OF MAY 2022 / 20TH VAISAKHA, 1944**

**WP(C) NO. 1614 OF 2021**

**PETITIONER:**

PHILIP K.J.  
AGED 55 YEARS, S/O JOSEPH, ,  
KAPPAMALAYIL, VADAKARA P O,  
THALAYOLAPARAMBU, KOTTAYAM  
(SECRETARY, COUNCIL FOR SOCIAL JUSTICE,  
BUILDING NO.19,MANGANAM PO, KOTTAYAM-686018)

BY ADVS.  
SRI C.S.MANILAL  
SRI.S.NIDHEESH

**RESPONDENTS:**

- 1 THE STATE OF KERALA  
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
- 2 THE PRINCIPAL SECRETARY TO GOVERNMENT  
PERSONAL AND ADMINISTRATIVE REFORMS DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 C.S.I., CENTRAL KERALA DIOCESE,  
REPRESENTED BY THE BISHOP SABU K CHERIAN,  
BISHOP HOUSE, CHALUKUNNU, KOTTAYAM, PIN-680586.
- 4 THE SECRETARY, C.S.I,CENTRAL KERALA DIOCESE,  
BISHOP HOUSE, CHALUKUNNU, KOTTAYAM, PIN-680586.
- 5 GIREESH K PREMJI  
KUNNUPURATH HOUSE, MUTTAMBALAM P O, KOTTAYAM-  
686004.
- 6 ISSAC N J, NADUPPARAMBIL,  
MUTTAMBALAM P O, KOTTAYAM - 686004.
- 7 JOHN ISSAC  
KUNNEL HOUSE, PAKKIL P O, KOTTAYAM, PIN-686012.
- 8 BAIJU C JACOB  
EDAMANA HOUSE, MUTTAMBALAM P O, KOTTAYAM , PIN-  
686004.
- 9 ASHA BINU  
H S S T, CMS HSS, MALLAPPALLY P O,

PATHANAMTHITTA-689587.

10 MARYKUTTY JOSEPH  
KOOROTHPARAMBIL, RUBBER BOARD P O, KOTTAYAM-686009.

11 KURIAN DANIEL  
L P S A, CMSHS, NEDUNGADAPPALLY, PERUMBRAMAVU P O,  
KEEZHVAIPOOR, MALLAPPALLY, PATHANAMTHITTA, PIN-  
689587.

\*ADDL. R12 TO R17 IMPEADED

ADDL. R12 THE SECRETARY TO GOVT.,  
REVENUE DEPARTMENT, SECRETARIAT, TRIVANDRUM.695  
001.

ADDL. R13 THE SECRETARY TO GOVT.,  
HIGHER SECONDARY EDUCATION DEPARTMENT, SECRETARIAT,  
TRIVANDRUM 695 001.

ADDL. R14 THE SECRETARY TO GOVT.,  
SURVEY AND LAND RECORDS DEPARTMENT,  
SECRETARIAT, TRIVANDRUM 695 001

ADDL. R15 THE SECRETARY TO GOVT.,  
GENERAL EDUCATION DEPARTMENT,  
SECRETARIAT, TRIVANDRUM.695 001.

ADDL. R16 THE SECRETARY TO GOVT.,  
HEALTH DEPARTMENT, SECRETARIAT, TRIVANDRUM.695 001.

ADDL. R17 THE CHAIRMAN,  
KERALA STATE ELECTRICITY BOARD LTD,  
VYDUTI BHAVAN, PATTOM, TRIVANDRUM 695 004

\*ADDL R12 TO R17 IMPEADED AS PER ORDER DATED 29-  
01-2021 IN IA 1/2021 IN WP(C)1614/21

BY ADVS.

SRI.SAJI MATHEW  
SRI.R.T.PRADEEP  
SRI.S.SUBHASH CHAND  
DR.K.P.PRADEEP  
SRI.T.T.BIJU  
SRI.K.C.HARISH  
SRI.DENU JOSEPH  
SHRI.BIBIN BABU

SRI.VIPIN NARAYAN, GOVT. PLEARDER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 15.03.2022, THE COURT ON 10.05.2022 DELIVERED THE  
FOLLOWING:

**T.R. RAVI, J.**

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W. P. (C). No.1614 of 2021  
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Dated this the 10<sup>th</sup> day of May, 2022

**JUDGMENT**

The writ petition has been filed seeking a direction to respondents 1 and 2 to consider Ext.P8 request and to take emergent action against respondents 5 to 11 in accordance with Ext.P1 Rules and for a further direction to respondents 1 and 2 to prohibit respondents 3 and 4 from allowing full-time Government servants from standing and contesting the election to the various Bodies of the CSI Sabha in violation of Ext.P1 Rules.

2. According to the petitioner, the 3<sup>rd</sup> respondent, which is the CSI Central Kerala Diocese, is a religious congregation following the Christian faith and the organisation has been registered as a non-trading company under the Companies Act. The petitioner is a member of the Sabha ever since he attained majority and is the Secretary of the Trust known as the Council for Social Justice, fighting against injustice in the society. The petitioner submits that the governance and administration of the Sabha are at two levels. At the grass-root level of the local Church, there is a Church committee and there is an Apex Body which is called the Diocese Council. The election is conducted to

the Church Committee as well as to the Diocese Council. The Diocese Council is presided by the Bishop. The Sabha is having colleges, schools, hospitals, retreat centers and other non-religious institutions and the governance is controlled and directed by the elected Council. The petitioner submits that for the past several years, there is a tendency of Government servants to contest in the elections of the Council and by virtue of their official positions there is a likelihood of corruption and nepotism under the cover of the membership in the council. To curb such activities, the 1<sup>st</sup> respondent had amended the Kerala Government Servants Conduct Rules, 1960 (1960 Rules for short) in 2014 by adding Rule 67A. Ext.P1 is the amended Rule as published in the official gazette. The Rule reads thus:

“67A. Taking part in communal or religious activity –

(1) No Government servant shall be an office-bearer of any communal or religious organisation or of such trust or society.

(2) A Government servant shall, within one month of his assuming charge as an office bearer of any scientific, literary or charitable society or of such trust or organisation, inform the Government regarding the assumption of charge and if in the opinion of the Government his continuance as such office bearer is not in public interest, he shall resign from such office.

(3) No Government servant shall, while associating himself with any society, trust or organisation referred to in sub-rule (2) take part in any activity that involves collection of money

or accept any subscription or other pecuniary assistance from any person or public or private entity.”

3. The petitioner submits that one Mathew Joseph who was a Legal Officer of the Law Department violated the above conduct Rules and contested in the election and continued to hold the post of a Councillor in the diocese council. A writ petition was filed, which was disposed of by Ext.P2 judgment directing the Government to take appropriate action. The Government thereafter issued Ext.P3 order whereby Sri Mathew Joseph was punished for misconduct by the imposition of a minor penalty. The finding in Ext.P3 order was that there is a violation of Rule 67A of the Kerala Government Servants Conduct Rules, 1960, and Shri Mathew Joseph was directed to abstain from continuing as an office-bearer of CSI East Kerala Diocese and report forthwith. The petitioner submits that in similar circumstances by Ext. P4 judgment the Madras High Court had also interdicted Government servants from participating in the election of CSI Church. The petitioner submits that the petitioner had made Ext.P5 request to the 3<sup>rd</sup> respondent to instruct the Election Officers not to allow the Government servants to contest the election to the CSI Council. Ext.P6 is the information received under the Right to Information Act, wherein the Public Information Officer has informed the applicant that as per G.O.(P)No.27/2014/PNARD, the Government servants are

prohibited from holding any post in the management of any religious or communal organisations even though they can act as members. The Government order referred to is Ext.P1 amendment to the Kerala Government Servants Conduct Rules. The petitioner submits that under Chapter 14B Rule 5 of the Kerala Education Rules(KER for short), no teacher shall, except with the previous sanction of the Government take part in the promotion, registration or management of any bank or company. It is submitted that the Sabha is a company and will come within the prohibition. The writ petition was filed alleging that the election to the CSI Council is going to be finalised by 30<sup>th</sup> January 2021. Respondents 5 to 8 are Government servants to whom Ext.P1 is applicable. Respondent is working as a Deputy Tahsildar, Revenue Recovery, Kottayam, the 6<sup>th</sup> respondent is a government servant, the 7<sup>th</sup> respondent is a Surveyor under the Survey Department, the eighth respondent is a clerk in the Health Department, the 9<sup>th</sup> respondent is a Higher Secondary School Teacher in an aided school, the 11<sup>th</sup> respondent is a Lower Primary School Assistant in an aided school and the 10<sup>th</sup> respondent is the Headmistress in an unaided Higher Secondary School. The petitioner submits that respondents 5 to 11 are disqualified to contest in the election. The petitioner had submitted Ext.P8 representation to the 2<sup>nd</sup>

respondent, which is the nodal department, to take action regarding the violation of conduct rules. The petitioner submits that no action has been taken on Ext.P8 so far. The writ petition has been filed in the above circumstances. The petitioner has thereafter filed I.A.No.2 of 2021 producing Exts.P9 to P14 as additional documents, which are representations made complaining about the violation of conduct rules by respondents 5 to 11, before additional respondents 12 to 17, who are superior officers of Respondents 5 to 11 and were sought to be impleaded in I.A.No.1 of 2021.

4. The 9<sup>th</sup> respondent has filed a counter-affidavit stating that she is a teacher who is governed by Chapter 14 C of the Kerala Education Rules and Ext.P1 Rules will not apply to aided school teachers like the 9<sup>th</sup> respondent. It is submitted that the Conduct Rules relating to teachers do not contain a rule which is similar to Rule 67A of the 1960 Rules. A counter affidavit has been filed on behalf of respondents 5 to 8 and 10. They submit that they and their predecessors who are following Christian religion, have been and are members of Madhya Kerala Diocese of Church of South India, for the last several generations. It is submitted that the CSI is a minority religious denomination of Christians as envisaged under Articles 26A, 29 and 30 of the Constitution of

India. It is submitted that the petitioner is a stranger to the Conditions of Service of Government Servants and hence cannot seek enforcement of the conditions of service which is in the realm of service jurisprudence. The counter-affidavit further states that the word 'religious organisation' has not been defined in the rules. It is submitted that there is no total ban for Government servants to be office bearers of societies, trust or organisation and the requirement is only to inform the Government about such membership. It is also contended that a religious organisation or community organisation or such trust or society which will not come under any regulatory mechanism by virtue of an existing law alone can come under the contemplation of a total ban under Rule 67A(1). It is submitted that the minority religious denomination to which the respondents belong has constitutional protection and its legal entity is the South Kerala Trust Association which is a company for the promotion of religion as envisaged under the Companies Act, 2013 and subject to the regulatory mechanism provided under the Constitution and the Companies Act and hence will not fall under the domain of religious organisation under rule 67A(1). Reference is also made in the counter affidavit to the decisions of the Hon'ble Supreme Court, whereby the fundamental right of minority religious denominations to establish and

administer religious, charitable, and educational institutions have been upheld. The respondents also contend that the petitioner does not have an indefeasible right to preclude them from contesting elections to the offices under the Diocese as part of their religious duty, particularly when there is no conflict of interest with their duty as government employees or otherwise.

5. The respondents 3 and 4 have filed a detailed counter-affidavit. It is stated that the 3<sup>rd</sup> respondent is a religious denomination following the Christian faith and not a religious organisation as alleged. It is further stated that the averment that the CSI Church has been registered as a non-trading company with the Companies Act is not correct. It is submitted that the properties both movable and immovable, of the CSI, are held by a company by the name Church of South India Trust Association (CSITA), and the said company is administering and supervising the same and ensuring that the income arising therefrom is properly applied solely for the objects and purposes of the Church of South India. It is submitted that the CSITA was registered in September 1947 under Section 26 of the Indian Companies Act, 1913 as a religious and charitable company that has no business character and has no profit motive. It is further submitted that the election to the executive committee and Synod from

among the members of the diocese and council is already over and the respondents 5 to 11 had not contested the election. It is submitted that the second relief in the writ petition cannot be sought for by the petitioner and if the said relief is granted it will have the effect of interfering with the constitutional protections guaranteed to the 3<sup>rd</sup> respondent as a minority institution. It is contended that the petitioner has no right to decide on who should administer the church or who should be elected to the Diocesan Council and that Rule 67A cannot override the provisions of the Constitution of India. It is submitted that the CSI Church and the CSITA are separate legal entities. It is stated that CSI Church consists of 24 Diocese spread across South India and each diocese has a Bishop, executive committee, and Diocesan Council. It is submitted that each Diocese has its own constitution and is subject to the constitution of the CSI and that the Diocesan Council is the lawmaking body of each diocese subject to the provisions of the Constitution of CSI. It is further submitted that the 3<sup>rd</sup> respondent is not the owner of colleges, schools, or other establishments and such institutions are under the ownership of the CSITA. It is contended that Rule 67A applies only to Government servants and not to any other person or legal entity and no prohibitory order can be issued against any person other than the Government servant

based on such Rules. It is contended that if a government servant violates any of the Service Rules, he will be answerable and no one else.

6. The petitioner has filed I.A.No.3 of 2021 producing the memorandum of association of the CSITA and the member list and contact numbers of the Diocesan Council as Exts. P15 and P16. It is pointed out in Ext.P16 that the 5<sup>th</sup> and 6<sup>th</sup> respondents are members of the Kottayam council. Ext.P17 produced by the petitioner is the Constitution of the CSI Central Kerala Diocese which is the 3<sup>rd</sup> respondent.

7. Advocate Sri C.S.Manilal, appearing for the petitioners refers to Rule 67A and submits that there is a total prohibition of any Government Servant being an office-bearer of any communal or religious organisation or of such trust or society. It is submitted that the intention of the Government is clear on a mere reading of the Rule, that what is prohibited is becoming an office-bearer of any Body which has a communal or religious colour. It is submitted that the CSI Sabha is an organisation which is a religious character. On the question whether a Sabha is a religious denomination, the counsel refers to the judgment of a Seven-Member Bench of the Hon'ble Supreme Court in **The Commissioner, HRE, Madras v. Sri Lakshmindra Thirtha**

**Swamiar of Sri Shirur Mutt [AIR 1954 SC 282]**. In paragraph 15 of the judgment, the Hon'ble Supreme Court considered the meaning of the expression religious denomination, which is extracted below.

“**15.** As regards Article 26, the first question is, what is the precise meaning or connotation of the expression “religious denomination” and whether a Math could come within this expression. The word “denomination” has been defined in the *Oxford Dictionary* to mean “a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name”. It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, — in many cases it is the name of the founder, — and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section

of the followers of Madhwacharya. As Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article.

8. On the question as to what constitutes "matters of religion", to which Clause (b) of Article 26 applies, the Court held in paragraph 17 as follows;

**"17.** It will be seen that besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies. What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an *American case* [ Vide *Davis v. Benson*, 133 US 333 at 342] it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as

either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

9. Reference is then made to the decision in **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of UP & Ors. [(1997) 4 SCC 606]** which follows **Shirur Mutt (supra)**. The Apex Court held that the word 'denomination' means the collection of individuals or class together under the same name, a religious group or body having a common faith and organisation and designated by a distinctive name. After referring to several other cases, the Apex Court held that the expression "religious denomination" must satisfy three conditions, namely, (1)

the collection of religious faith, a system of belief that is conducive to spiritual well-being, i.e., a common faith; (2) common organisation and (3) designation by a distinctive name. This view has been noticed and reiterated in a later judgment of the Hon'ble Supreme Court in **Indian Young Lawyers Association and others v. State of Kerala and others 2018(4) KLT 373** in paragraph 92. The counsel submits that no distinction can be drawn between the words "religious organisation" and "religious denomination", since going by the decisions of the Hon'ble Supreme Court, the denomination is necessarily a religious organisation. It is hence submitted that whether the Sabha chooses to call itself an organisation or a denomination, Rule 67A will apply to Government servants who seek to hold an office in such Sabha. Counsel then refers to Articles 25 and 26 of the Constitution of India and submits that Article 25 is a right available to a person to freely profess, practice, and propagate a religion, while Article 26 is a right of a religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with the law. It is submitted that Rule 67A does not in any manner violate Article 26,

since none of the rights of CSI Sabha have been taken away. The restriction is only on Government servants becoming office-bearers of such religious organisations which is something personal to the Government servants and subject to any restriction placed under Article 25. Reference is made to the Constitution Bench judgment in **Sri Venkataramana Devaru and Ors. v. State of Mysore & Ors. [AIR 1958 SC 255]**, wherein the Hon'ble Supreme Court held that the restrictions which can be imposed under Article 25 (2)(b) will apply to Article 26 also. The Hon'ble Supreme Court considered the expression "matters of religion" in Article 26(b). The Court held that Article 25(b) applies in terms to all religious institutions of a public character without qualification or reserve. The Court was considering whether the right of a religious denomination to manage its own affairs in matters of religion which is guaranteed under Article 26(b) is subject to and can be controlled by a law protected by Article 25(2)(b) throwing open a Hindu public temple to all classes and sections of Hindus. The Court held that denominational institutions are within Article 25(2) (b) and that Article 26(b) must be read subject to Article 25(2)(b). The counsel argued that even if the right of a denomination is to be conceded under Article 25(2)(b), restrictions like the one contained in Rule 67A can be imposed. On the question whether a

writ petition in the nature of public interest litigation can be maintained, it is contended that unlike questions relating to service, the Public Servants Conduct Rules also takes in within its parameters, aspects that are not purely related to their service, but which are related to the conduct of the public servant in public places as well. Particular reference is made to Rule 93(b) which relates to the consumption of intoxicating drinks and drugs in public places. It is thus submitted that Rule 67A basically relates to a conflict of interest of a public servant who is engaging himself in religious or communal activities, and such matters can necessarily be challenged in a writ petition. It is further submitted that a public servant is a Trustee of the people. Referring to Articles 27 and 28 of the Constitution of India which prohibit the State from compelling any person to pay taxes, the proceeds of which are to be appropriated in payment of expenses for the promotion or maintenance of a particular religious denomination, and from indulging in expenditure towards religious instructions in educational institutions maintained out of State funds, it is submitted that Right to freedom of religion is subject to restrictions of various kinds. The counsel then referred to the judgment of the Hon'ble Supreme Court in **Sonal Sihimappa v. State of Karnataka [AIR 1987 SC 2359]**, wherein the Hon'ble Supreme

Court held that a public servant whatever his status be, is in the position of a trustee. Regarding the Conduct Rules, the counsel refers to the Division Bench judgment of this Court in **Manmadhan v. Krishnappan Unni [1985 KLT 670]**. This Court was concerned with the engagement of a public servant in the business of money lending. The Court held that the Rules have been framed in exercise of the power vested in the Governor under the proviso to Article 309 of the Constitution of India in the public interest and as a matter of public policy.

10. The counsel also refers to the judgment in **Balagopalan v. State of Kerala [2021 (1) KLT OnLine 1014 = 2021 (2) KLT SN.5 Case No.5]**, wherein a Division Bench of this Court considered the correctness of an order issued by the Government, whereby the *dies non* declared for participation in a strike by the Government servants, was regularised. After considering the Conduct Rules and Rule 14A of the Kerala Service Rules, Part I (Chapter III), this Court held that the order issued by the Government cannot be sustained in the light of the statutory rules which clearly prohibit participation in a strike and declares the consequence of participation in the strike. The above judgment is relied on to impress upon the mandate of the Government Servants Conduct Rules. The Court held that even if such a

decision is taken as a policy decision, that cannot be legally justified since there cannot be a policy against a statutory provision. The counsel further submitted that it can be seen from Ext.P15 which is the memorandum of association of the CSITA that it has been registered under the Companies Act, 1913. Ext.P17 is referred and it is contended that the Sabha is necessarily an organisation of people believing in a particular faith. It is hence submitted that Rule 67A will apply to the holding of a post in the Sabha.

11. Sri Subhash Chand, counsel for the 9<sup>th</sup> respondent raised a primary contention that Ext.P8 is pending before the Government and a parallel remedy cannot be invoked under Article 226 of the Constitution. Reference is made to the Full Bench decision of this Court in **Reena R.P. v. R.S.Geena and Others [2010 (2) KHC 110]** to submit that a writ petition cannot be maintained when a statutory revision is pending before the Government. Particular reference was made to paragraph 7 of the judgment. It is further contended that Rule 67A cannot be applied in the case of Aided School Teachers and that the prohibition under Rule 67A (1) arises only if a person becomes an office bearer and there cannot be a denial of the right to participate in an election. It is submitted that in fact none of the party respondents have

become office bearers and as such, the writ petition itself is misconceived. Reference is also made to paragraph 11 of Ext.P3 Government Order dated 28.1.2020 which was issued regarding the holding of a post by Sri Mathew Joseph to submit that, on facts the said person was holding a post. Regarding Ext.P4 judgment of the High Court of Madras, it is submitted that, unlike Kerala, in Tamil Nadu there are rules for governing teachers of private schools. It is further submitted that the writ petition is only a case of a disguised public interest. Reference is made to the judgment in **Jaleel P.P. v. P.K.Muralikrishnan & Ors. [2014 (1) KHC 672]** rendered by a Division Bench of this Court. In the above judgment, this Court had held that in service matters, a third party having no concern with the case at hand, cannot claim to have a *locus standi*. Specific reference is made to paragraphs 28 and 30 of the judgment.

12. This Court in the said judgment has reiterated the guidelines that are to be followed while entertaining a Public Interest Litigation so as to preserve the purity and sanctity of such litigations. With reference to service matters, relying on the Apex Court judgment, this Court found that except for a writ of *quo warranto*, a Public Interest Litigation is not maintainable in service matters.

13. Sri R.T.Pradeep, learned counsel appearing for respondents 5 to 8 and 10 contends that CSI is a minority religious denomination of Christians as envisaged under Article 26(A), 29 and 30 of the Constitution of India and hence cannot be treated as a religious organisation mentioned in Rule 67A of the 1960 Rules. It is submitted that a minority religious denomination has constitutional protection under Article 26(A) and Article 30. It is further submitted that the religious organisation mentioned in Rule 67A is an organisation under the nomenclature of religion that is not governed by any regulation of the Government. It is further submitted that the minority religious denomination to which the respondents belong, which has constitutional protection, and, the legal entity which is a Company formed for the protection of religion and subject to the regulatory mechanism provided under the Constitution as well as the Companies Act, will not fall within the domain of religious organisation under Rule 67A (1). Reference is made to several judgments of the Hon'ble Supreme Court in support of the contention that the minority religious denominations enjoy certain rights which cannot be taken away by Rule 67A of the 1960 Rules. It is further submitted that there is no conflict of interest between the official duties of the party respondents and their religious duties as members of the Diocese

or those attached to the various offices under the Diocese. It is also contended that respondents 5 to 8 and 10 are not office bearers of the elected office of the Diocese.

14. The counsel for respondents 3 and 4 apart from supporting the stand taken by respondents 5 to 10, submits that respondents 5 to 11 had not contested in the election and as such the prayer regarding the same need not be considered. It is contended that the 3<sup>rd</sup> respondent enjoys constitutional protection and the same will be affected if the second prayer in the writ petition is granted. It is also contended that the 3<sup>rd</sup> respondent is a religious denomination and not a religious organisation.

15. The following issues arise for consideration;

- (a) Whether the petitioner can maintain the writ petition?
- (b) Whether respondents 3 and 4 are entitled to protection as a minority religious denomination from the operation of Rule 67A of the 1960 Rules?
- (c) Whether respondents 3 and 4 come within the meaning of the term "religious organisation"?

16. Even though the counsel appearing for the respondents have argued that the 3<sup>rd</sup> respondent is a religious denomination

and not a religious organisation, there appears to be no real dichotomy between the two terms. The Larger Bench of the Hon'ble Supreme Court in **Shirur Mutt (supra)**) has considered the meaning of the term "religious denomination" and identified its characteristics as (1) common faith, (2) common organisation and (3) designation by a distinctive name. It can thus be seen that in mathematical terms, a religious denomination is a larger set into which will fall the smaller set called religious organisation. In other words, there can be no religious denomination without a religious organisation. Rule 67A (1) of the 1960 Rules specifically prohibits Government servants from being office bearers of any communal or religious organisation. So, whether the 3<sup>rd</sup> respondent is to be called as a denomination or as an organisation, holding an office of the 3<sup>rd</sup> respondent by a Government servant is prohibited on a reading of Rule 67A of the 1960 Rules. This Court is hence of the opinion that the contentions raised by the respondents that the 3<sup>rd</sup> respondent being a religious denomination will not in any way be affected by Rule 67A of the 1960 Rules cannot be countenanced.

17. The next question to be considered is whether Rule 67A of the 1960 Rules will in any way affect the rights of the minority entities protected under Articles 26 and 30 of the Constitution of India. Article 26 protects the right of every religious denomination

to establish and maintain institutions for religious and charitable purposes, to maintain its own affairs in matters of religion, to own and acquire movable and immovable properties and to administer such property in accordance with the law. In this case, we are primarily concerned with Article 26(A) and (B). The right available to the denomination is to establish and maintain institutions. The prohibition contained in Rule 67A is not regarding the establishment or maintenance of such institutions. The remaining question is whether the right to manage its own affairs available under Article 26(B) has been curtailed in any manner. Here again, what is protected is the right of a denomination to manage its own affairs **in matters of religion (emphasis supplied)**. An election to the office bearers of the Diocese or the Church Committee cannot be termed as a matter of religion. True, the result of such an election can decide who should administer the Church or Diocese. The said aspect is not protected by Article 26 of the Constitution. Article 30 also relates to the right of minorities to establish and administer educational institutions and the operation of Rule 67A does not in any way affect the rights available under Article 30 to the 3<sup>rd</sup> respondent. Coming to Article 25, the right guaranteed therein is a personal right available to all persons to freely profess, practice, and propagate religion. It is not a right

available to a denomination. The said right also is subject to regulation by the State. Rule 67A is a Conduct Rule imposed on Government servants alone who are a class by themselves, and the prohibition contained in Rule 67A does not affect the independent right of members of the denomination to freely profess, practice, and propagate the religion. The right that is curtailed is only a right to hold any office of a religious organisation and nothing more. In the above circumstances, the contentions regarding the protection under Articles 25, 26, and 30 of the Constitution of India cannot be sustained. The restriction which can be imposed under Article 25(2)(b) will also apply to Article 26. [See **Venkataramana Devaru (supra)**]. On facts, there is a dispute as to whether respondents 5 to 11 are holding any office of the 3<sup>rd</sup> respondent. Exts.P9 to P14 are said to be pending before additional respondents 12 to 17. It would not be proper for this Court to render a factual finding on the above aspect and the same will have to be taken up before the appropriate authorities in the light of the law declared by this Court that Rule 67A applies to the respondents.

18. The 2<sup>nd</sup> prayer in the writ petition is for a direction to respondents 3 and 4 to prohibit respondents 3 and 4 from allowing full-time Government servants from standing and contesting

election to the various bodies of the CSI Sabha. Rule 67A does not prohibit contesting an election. What is prohibited is only holding an Office. If the result of a contest in an election is placing a Government servant in an office, necessarily, Rule 67A will come into play. This Court will not hence be justified in issuing a direction as prayed for in prayer No.2. All that needs to be stated is if a Government servant participates in an election to any Body, which is part of a religious organisation/denomination, as a result of which the said Government servant is occupying a post under the said religious organisation/denomination, Rule 67A will apply to such a Government servant.

19. In the result, the writ petition is allowed. It is declared that Rule 67A of the 1960 Rules will apply to holding an office under the 3<sup>rd</sup> respondent. There will be a direction to respondents 12 to 17 to consider and dispose of Exts.P9 to P14 in accordance with law within six weeks from the date of receipt of a copy of this judgment, in the light of the declaration made above.

sd/-

**T.R.RAVI**

**JUDGE**

Pn/dsn

**APPENDIX OF WP(C) 1614/2021**

## PETITIONERS' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE KERALA GOVERNMENT SERVANTS CONDUCT (AMENDMENT) RULES, 2014 VIDE GO(P) NO.27/2014 P & ARD DATED 7/8/2014.
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 14.08.2019 IN WPC NO. 34324/2018 AND 34330/18.
- EXHIBIT P3 TRUE COPY OF THE ORDER GO(RT) NO.108/2020/LAW DATED 28/01/2020 OF THE LAW SECRETARY.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 4.12.2020 IN WP(MD) 13683/2020 OF THE HON'BLE HIGH COURT OF MADRAS.
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 18/12/2020 TO THE 3RD RESPONDENT BY THE PETITIONER.
- EXHIBIT P6 TRUE COPY OF THE INFORMATION OBTAINED UNDER THE RT ACT DATED 24/06/2020 TO BIJO JOHN.
- EXHIBIT P7 TRUE COPY OF THE INFORMATION OBTAINED UNDER THE R T ACT TO E.M. MATHEW.
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED 1.1.2021 TO THE 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P9 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 12TH RESPONDENT WITH RECEIPT
- EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 13TH RESPONDENT WITH RECEIPT
- EXHIBIT P11 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 14TH RESPONDENT WITH RECEIPT
- EXHIBIT P12 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 15TH RESPONDENT WITH RECEIPT.
- EXHIBIT P13 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 16TH RESPONDENT WITH RECEIPT
- EXHIBIT P14 TRUE COPY OF THE REPRESENTATION DATED 22.01.2021 BY THE PETITIONER TO THE 17TH RESPONDENT WITH RECEIPT.

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|-------------|----------------------------------------------------------------------------------------------|
| EXHIBIT P15 | TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF<br>THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION |
| EXHIBIT P16 | TRUE COPY OF THE DISCESAN COUNCIL MEMBERS<br>LIST AND CONTACT NUMBERS                        |
| Exhibit P17 | TRUE COPY OF THE RELEVANT PORTION OF THE<br>CONSTITUTION OF THE CSI CENTRAL DIOCESE.         |