

Most Rev. P. M. A. Metropolitan and others

Vs

Moran Mar Marthoma Mathews and another

Civil Appeal Nos. 4958-60 of 1990

(B. P. Jeevan Reddy, S. C. Sen, S. B. Majmudar JJ)

25.03.1996

JUDGMENT

1. This order may be read in continuation of the Judgment dated June 20, 1995, (reported in 1995 AIR SCW 3133). Inasmuch as the Malankara Association was vested with control over the religious and communal affairs of the entire Malankara Christian Community, it was held desirable and necessary that the Association must "truly and genuinely reflect the will of the said community". For ensuring it, it was observed : "its composition must be so structured as to represent the entire spectrum of the community. A powerful body having control over both spiritual and communal affairs of the Malankara Church should be composed in a reasonable and fair manner." It was held that judged from the above angle, clause (68) of the 1984 Constitution cannot be said to be a fair one, inasmuch as the said clause provided for representation Parish Churchwise. We took note of the contention urged on behalf of the Patriarch group that with a view to obtain majority in the Association, the Catholicos group has created a number of new Parish Churches with very small membership and that giving equal representation to all Parish Churches irrespective of the strength of their membership is neither fair nor does it ensure a fair and proper representation of the community in the Association. It was held that it is necessary to substitute clause (68) (now clause (71) and other relevant clauses of the Constitution to achieve the aforesaid objective which would also affirm the democratic principle, which appears to be one of basic tenets of this Church. Accordingly, we direct both the parties as well as the Rule Committee (mentioned in clause (120) of the Constitution) to place before this Court within three months from today draft amendments to the Constitution". It was observed that after perusing the said proposals, the Court will make appropriate directions.

2. Accordingly, both parties have placed before us their respective proposals. Some other parties too have placed their proposals. The proposals put forward by the Patriarch group seek to amend a large number of clauses in the Constitution which was not the intention behind the above direction. The objective was to amend only clause(68) and other clauses to ensure the aforementioned objective.

3. It is brought to our notice that there are two clauses in the Constitution which necessarily have to be amended, if the aforementioned objective has to be attained. They are clauses (71) and (46) (re-numbered clauses). They read as follows :-

"Article 46 : The Vicar or if inconvenient for him, one of the Assistant Priests deputed by the Vicar and two laymen elected by every Parish assembly in a Diocese shall be members of the Diocesan Assembly. Their term of office shall be three years.

Article 71: A priest and two laymen elected by each Parish assembly and the members of the existing Managing Committee shall be members of the Association."

We may now set out the amendments as proposed by the Catholicos group and Patriarch group:

AS PROPOSED BY THE CATHOLICOS GROUP

AS PROPOSED BY THE

PATRIARCH GROUP

The following shall be the members of the Association i. e., (1) All men and women who are members of the Malankara Church, are not less than the age of eighteen years and are members of a Parish Assembly in Malankara (Kerala) shall be members of the Malankara Association.

(a) members of the existing Managing Committee.

(b) a priest from parish elected by the Parish Assembly. (2) The following powers of the Malankara Association shall be exercised directly by all the members of the Malankara Association and all the other powers shall be exercised by the Managing Committee and the office bearers so elected.

(c) (i) two laymen elected by the Parish Assembly of each of those parishes whereof the number of families are up to 400.

(ii) three laymen elected by the Parish Assembly of each of those families are between 401 and 800; (a) Election of the Catholicos, Malankara, Metropolitan, Two Associate Trustees, Association Secretary and Assistant to the Malankara Metropolitan.

(iii) four laymen elected by the Parish Assembly of each of those parishes whereof the number of families are between 801 and 1200; (b) Election of the Managing Committee.

(iv) five laymen elected by the Parish Assembly of each of those parishes whereof the number of families excel 1200. Provided, however that such election of members of the Managing Committee shall be held at the level of the dioceses in Malankara (Kerala), that is to say that the members of the Association belonging to the Parish diocese in Malankara (Kerala) will vote and elect only those members of the Managing Committee who will be representing that diocese.

(c) Ratification of the amendments to the constitution proposed by the Managing Committee.

(3) Whenever the office of the Catholicos falls vacant or when a vacancy is expected due to retirement of the incumbent, the Managing Committee shall propose two names for final selection by the members of the Association and the Metropolitan who secures the higher number of votes shall be consecrated as the Catholicos.

For the above purpose each member of the Managing Committee shall be entitled to

propose any Metropolitan who is a Vice President of the Malankara Association. The names of the two Metropolitans securing the largest number of proposals shall be placed before the Association members for selection of one of them by ballot. The Catholicos shall hold office till he attains the age of 75 years or resigns.

(4) Election shall be held one in five years to the following offices :-

i. Malankara Metropolitan;

ii. Two Associate Trustees;

iii. Association Secretary;

iv. Managing Committee;

v. Assistant to the Malankara Metropolitan.

(5) (a) Whenever a vacancy of a Diocesan Metropolitan arises or is expected on account of retirement of the incumbent the Election Committee shall conduct an election for the said office in the said Diocese.

(b) A priest of the Malankara Church shall be elected to be consecrated as the Metropolitan of a Diocese by the Association members of the Parish Churches of that Diocese.

Provided that a priest to be elected for consecration as Diocesan Metropolitan should secure 50% + 1 of the votes polled among the members of the Association in the Diocese.

The person thus elected shall be consecrated by the Patriarch or the Catholicos with the co-operation of the Synod.

(c) A Metropolitan shall hold office till he attains the age of seventy five years.

(d) In the first election after the amendment of the constitution, the members in the Diocese shall approve one of the two incumbent Diocesan Metropolitans.

Article 46 (a) The Vicar or if it be inconvenient for him, nor of the Assistant Priests deputed by the Vicar as well as lay representatives elected by the Parish Assembly of every parish in the Diocese as laid down in Clause (b) below shall be the members of the Diocesan Assembly. (a) The Parish Churches of Malankara Church are grouped into dioceses and the number and jurisdiction of the dioceses shall be determined by the Managing Committee of the Association from time to time.

(b) Every diocese shall have a diocesan assembly which shall consist of the following :

(b) Parishes, with up to 400 families shall elect two representatives, those with 401 to 800 shall elect three representatives, those with 801 to 1200 families shall elect four representatives and those parishes exceeding 1200 families shall elect five

representatives from among the lay members to the Diocesan Assembly. (i)
Diocesan Metropolitan (President)

(ii) All priests (including vicars and assistant vicars) who are in active service in the diocese.

(iii) Lay representatives of all the Parish Churches in diocese,

(c) The term of office of the Diocesan Assembly shall be three years. Provided that the number of lay representatives to be elected to the diocesan assembly from each Parish Church shall be fixed as per the scale given below :-

Parish Churches having 100 or more members but 500 or less members - 1 lay representative; Parish churches having more than 500 members-- 1 additional lay representative for every additional 500 members and 1 more lay representative for the remainder of the members beyond the multiples of 500 if such remainder is not less than 250.

Parish Churches having less than 100 members shall not be entitled to have an independent lay representative, but may with mutual consent join any other Parish Church, and, if the combined strength of their members is 100 or more, shall be entitled to have a representative for such combined strength.

(c) 30% of the representatives of the Parish Churches shall be women and the wards to be reserved for women to ensure such representation shall be decided by the Election Committee of the Association.

(d) The term of office of the diocesan assembly shall be coterminous with that of the Managing Committee.

4. Having heard the counsel for the parties and considered the relevant facts and circumstances, we direct that Articles 71 and 46, as provided hereunder, shall stand substituted in the place of the existing Articles 71 and 46 in the Constitution with effect from this day:

"Article 71: The following shall be the members of the Syrian Christian Association (Malankara Association) viz.,

(a) Members of the existing Managing Committee.

Provided that the nominated members of the Managing Committee, if any, shall not be entitled to vote at the election of the Catholicos, Malankara Metropolitan or any other holder of office who is to be elected by the Association.

(b) A Priest from each Parish Church elected by the Parish Assembly; provided that if in any parish church, there is only one priest, he shall be priest-representative of the Parish church without the need of an election;

(c) (i) One layman member elected by the Parish Assembly of each Parish Church whose membership does not exceed 100 families;

(ii) One additional layman member to be elected by the Parish Assembly of a Parish Church having a membership of more than 100 families but not exceeding 250 families.

(iii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership exceeding 250 families but not exceeding 500 families;

(iv) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 500 families but not exceeding 750 members;

(v) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 750 families but not exceeding 1000 families;

(vi) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1000 families but not exceeding 1250 families;

(vii) One more additional layman member to be elected by the Parish Assembly of a Parish Church, having membership of more than 1250 families but not exceeding 1500 families;

(viii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1500 families but not exceeding 1750 families.

(ix) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1750 families but not exceeding 2000 families;

(x) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 2000 families;

Provided that each family which is a member of the Parish Church shall have one vote and it is for the family to decide who among them shall participate in the voting.

Providing further that a vote can be cast on behalf of the family either by a male member or by a female member provided he or she has attained the age of twenty one years.

Provided further that the membership of each Parish Church shall be determined with reference to the entries in the relevant register maintained by each Parish Church as on the date of the Judgment, i. e., June 20, 1995.

(d) The term of the member elected under Clauses (a) and (b) above shall be five years.

(e) The Managing Committee shall be elected every five years soon after the election

of the members under clauses (b) and (c).

Article 46 : The following shall be the members of the Diocesan Assembly, viz.,

(a) A Priest from each Parish Church elected by the Parish Assembly; provided that if in any Parish church, there is only one priest, he shall be the priest-representative of the Parish Church without the need of an election;

(b) (i) One additional layman member to be elected by the Parish Assembly of a Parish Church having membership does not exceed 100 families;

(ii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 100 families but not exceeding 250 families;

(iii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership exceeding 250 families but not exceeding 500 families;

(iv) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 500 families but not exceeding 750 families;

(v) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 750 families but not exceeding 1000 families;

(vi) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1000 families but not exceeding 1250 families;

(vii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1250 families but not exceeding 1500 families;

(viii) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 1500 families but not exceeding 1750 families'

(ix) One more additional layman member to be elected by the Parsih Assembly of a Parish Church having membership of more than 1750 families but not exceeding 2000 families;

(x) One more additional layman member to be elected by the Parish Assembly of a Parish Church having membership of more than 2000 families;

(c) The term of members elected under clauses (a) and (b) shall be five years."

5. It is directed that the election of member of the Association and the Diocesan Assemblies shall take place within three months from today on the basis of Articles 71 and 46 aforementioned.

PART-II

6. Another controversy which was raised before us relates to the appointments made on or after January 1, 1971 up to the date of the judgment of this Court. It is submitted that in respect of some posts, appointments have been made by both the groups, with the result that in respect of certain offices/posts, there is more than one claimant. At this juncture, it is not possible to give any specific direction as to who among the two contenders is the legitimate incumbent. It is accordingly directed that the status quo as on the date of the judgment shall continue until a new Managing Committee is elected. The said Managing Committee can decide the said dispute, if and when necessary.

PART-III

7. It is brought to our notice that the decree prepared by this Court pursuant to the judgment dated June 20, 1995, has been wrongly prepared. This is agreed to by both Shri Parasaran, learned counsel for the Patriarch group and Shri F. S. Nariman, learned counsel for the Catholicos group.

8. A decree drafted should truly reflect the operative decision and directions in the judgment. That is the principle. We, therefore, direct Ms. Manju Goel, Registrar (Judicial-II) to prepare a decree in the light of the judgment aforesaid, after notice to both the parties. It is obvious that the decree shall also incorporate the directions given in this Order. If either party or both of them are not satisfied with the decree drafted by the said Registrar (Judicial-II), the matter may be requested to be placed before us for appropriate orders in that behalf. Order accordingly.