In the High Court at Calcutta

Civil Revisional Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No. 863 of 2019

Church of North India

Vs.

Rt. Reverend Ashoke Biswas

For the petitioner	:	Mr. Samrat Sen, Mr. Sanjay Kumar Baid, Mr. Ballarko Sen
For the opposite party	:	Mr. Sabyasachi Choudhury, Mr. Nirmalya Dasgupta, Mr. Debargha Basu, Mr. Pradeep Kumar Upadhyay
Hearing concluded on	:	05.04.2019
Judgment on	:	17.04.2019

Sabyasachi Bhattacharyya, J.:-

1. The present application under Article 227 of the Constitution of India has been preferred by the defendant in a suit filed by the opposite party for declaration that the purported decision adopted by the Executive Committee of the Synod of the defendant in its 102nd meeting held on 18th August, 2018 and the decision communicated on 22nd August, 2018 are wrongful, and for consequential reliefs. By virtue of the impugned order dated February 5, 2019, the Sixth Bench, City Civil Court at Calcutta dismissed the application of the petitioner under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit.

2. Learned senior counsel appearing on behalf of the petitioner opens his arguments by submitting that the considerations which should weigh with the court at the time of deciding applications for rejection of plaint have to be limited to a plain and meaningful reading of the plaint, the documents referred to therein and the documents filed/annexed with the plaint.

3. The present suit, it is argued, is barred by Section 14(1) (b) of the Specific Relief Act, 1963, since the suit, according to the petitioner, is one for specific performance of a contract of employment of personal nature, in the garb of a declaratory suit.

4. In this context, learned senior counsel relies upon several documents filed with the plaint, including a letter dated August 22, 2018 issued by the opposite party to the moderator, the Synod of the Church of North India (CNI) challenging the decision to superannuate the opposite party.

5. It is submitted that several expressions were used in the said letter by the opposite party which indicate that the opposite party admitted his post to be a service, which, by its very nature, was one for personal service. Examples of such expressions, used in the letter and relied on by the petitioner, are as follows:

"Continued Service", "Service Stipulations", "Tenure of Service", "Supersession of my service", "Extension of Service" and "retirement". The letter also spoke of "legal and legitimate right" vested in an employee to remain in service till the "age of superannuation".

6. Learned senior counsel next relies on the letter of appointment issued by the CNI (petitioner) to the opposite party. Even such letter mentioned about the "appointment".... "subject always to the constitution of the said Church" and the post of Bishop was referred to as an "office".

7. Another letter dated February 4, 2016 addressed to the General Secretary of the Synod of the CNI, authored by the opposite party, also mentioned about "extension of service" and "superannuation".

8. The petitioner next places reliance on several clauses of the constitution of the CNI, accepted and adopted at the second ordinary meeting of the Synod held on July 9-13, 1974, subsequently amended several times, and bye-laws, as approved by the 6th Synod of the CNI during 3-9th October, 1986. The constitution contains the service rules governing the employees, including Bishops like the opposite party, as per the petitioner. Learned senior counsel read out in this context Section IV, clause 14(a) of the constitution, which provides that the Synod shall arrange for the election, appointment, transfer, discipline, suspension, termination of services and retirement of Bishops and Assistant Bishops of the CNI.

9. Clause 23 provides that the Synod shall arrange for the salaries of Diocesan Bishops and Assistant Bishops and other employees appointed by the Synod of the CNI, their provident funds, superannuation funds and gratuity scheme and/or any other emoluments or expenses, which go with their respective offices.

10. Section VII, clause 7 of the Constitution provides that the moderator shall grant the Bishop's leave of absence from their Diocese within the terms and Service Rules for Bishops as approved by the Executive Committee.

11. Section VIII provides that the moderator shall be the authority to receive letters of resignation from the Bishop and other office bearers of the Synod for action by the Executive Committee and shall also inform the Diocese concerned immediately.

12. Section X, clause 10 of the Constitution provides that the Executive Committee shall take necessary action regarding the election, appointment, installation, suspension, termination of services, retirement, resignation and transfer of Diocesan Bishops and Assistant Bishops according to the rules framed by it.

13. These clauses, read conjointly, go on to show that the Bishop is nothing but an employee of the petitioner and is governed by terms and conditions of a contract for personal service.

14. In this regard, learned senior counsel for the petitioner moves on to several averments made in the plaint itself.

15. Paragraph no. 8 of the plaint refers to the Executive Committee of the defendant/petitioner being empowered to deal with the suspension, termination of services, retirement, resignation and transfer of Bishops according to rules framed by the defendant. Again, paragraph no. 33 of the plaint refers to "conditions of service" and states that compulsory retirement, dismissal and reduction in age of retirement being part of conditions of service, extension of service is equally a condition of service.

16. Even the cause title of the plaint, it is submitted, refers to the "administrative functional office" of the petitioner being at 51, Chowringhee Road.

17. By referring to the said paragraphs of the plaint, the petitioner argues that the plaintiff/opposite party admitted that the nature of his post was a service coming within

the ambit of a "master-servant" relationship or an employment arising from a contract of personal nature.

18. By referring to the language of Section 14(1)(b) of the Specific Relief Act, 1963, the petitioner argues that the suit is palpably barred under the said provision and as such the plaint ought to have been rejected at the outset by the trial court, instead of compelling the defendant/petitioner to continue litigating unnecessarily.

19. Section 14 of the Specific Relief Act, 1963, before it was amended by the Amendment Act of 2018 with effect from October 1, 2018, stood as follows:

"**Specific Relief Act, 1963:-**

14. Contracts not specifically enforceable. – *(1) The following contracts cannot be specifically enforced, namely: -*

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases: -

(a) where the suit is for the enforcement of a contract, -

(i) to execute a mortgage or furnish any other security for securing the repayment or any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lendor is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for, -

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in the firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms

sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) *the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and*

(iii) *the defendant has, in persuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.* **"**

20. After such amendment, the section stands as follows:

"14. Contracts not specifically enforceable

The following contracts cannot be specifically enforced, namely:-

(a) *where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;*

(b) *a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;*

(c) *a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and*

(d) *a contract which is in its nature determinable.***"**

21. In support of his contentions, learned senior counsel for the petitioner cites a judgment reported at *(2004) 3 SCC 172 [Pearlite Liners (P) Ltd. vs. Manorama Sirsi],* wherein it was held that it is a well-settled principle of law that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. An employer cannot be forced to take an employee with whom relations have reached a complete loss of faith between the two. This general rule of law is subject to three well-recognized exceptions:

i. Where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India;

ii. Where a worker is sought to be reinstated on being dismissed under industrial law;

iii. Where a statutory body acts in breach of violation of the mandatory provisions of the statute.

22. Learned senior counsel next cites a judgment reported at *(1976) 2 SCC 58 [Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others],* wherein the majority view laid down the same proposition as reiterated in *Pearlite Liner (P) Ltd. (supra).* It was further held that before an institution can be considered a statutory body, to come within the third exception as stated above, it must be established that it was created under the statute and owes its existence to the statute. This is distinct from an institution which is not created by or under a statute but is governed by certain statutory

provisions for the proper maintenance and administration of the institution. The adoption of certain statutory provisions by itself is not sufficient to clothe an institution with a statutory character. The institution concerned must owe its very existence to a statute, which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence? If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions, it cannot be said to be a statutory body. This was held by the majority view of Khanna and Fazal Ali, JJ.

23. The petitioner next cites a judgment reported at *(1998) 2 SCC 70 [I.T.C. Limited vs. Debts Recovery Appellate Tribunal and others],* wherein it was held that while rejecting a plaint under Order VII Rule 11(a) of the Code of Civil Procedure, it was to be seen whether the plaint disclosed the cause of action and the court had to ascertain whether the plaint created an illusion of cause of action by clever drafting. Clever drafting, creating illusions of cause of action, is not permitted in law and a clear right to sue should be shown in the plaint. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order VII Rule 11(a).

24. The next judgment cited on behalf of the petitioner is that of *Securities and Exchange Board of India vs. Satya Ranjan Baidya,* reported at *(2013) 2 CHN 465*, where a co-ordinate Bench of this court held inter alia that where the substance of the plaint, the ulterior and

sinister motive thereof and the mockery that it makes of the judicial system are all there to see upon a casual reading thereof, the plaint ought to be rejected. It was held that in the trial court's myopic reading of the plaint, it failed to notice the public harm that it was perpetuating in allowing the first defendant to hide behind the plaintiff and obtain orders which were detrimental to the interest of public investors. The trial court was said to have acted with material irregularity in missing the wood for the trees and failing to recognize the mischief that was set afoot by the first defendant through the agency of the plaintiff.

25. Learned senior counsel thereafter cites another judgment of the same co-ordinate bench, reported at *AIR 2017 Cal 98 [Smt. Sumana Venkatesh Nee Sur vs. Sri Susanta Kumar Sur and others]*, in support of the proposition that if the limited inquiry that a court may make upon receiving a challenge to a plaint on the ground that it does not disclose any cause of action, requires an interpretation of the document appended to or relied upon in the plaint, such interpretation must follow and only if the cause of action pleaded passes muster upon such interpretation, will the plaint survive the challenge. It was further held that it is true that there is a view that an involved question should not engage a court at a stage prior to the trial, or, at least, on an application for rejection of the plaint on the ground that it does not disclose any cause of action. The original view was that only if the meanest mind could not discern a cause of action from a plaint, would the plaint be liable for rejection on a defendant's preliminary challenge; but it must be remembered that these views were of a day and age when a suit would be disposed of in

months and not languish for decades without end as they do now. Crafty drafting and convoluted pleadings sometimes create the illusion of a cause of action where none exists and the modern approach is to read the plaint meaningfully to discover if there is any cause of action apparent therefrom. Subsequent events are now also taken into account at the preliminary stage to ascertain whether the suit has become infructuous or the cause of action as pleaded overtaken by a subsequent event. The approach of a court has to be more meaningful than pedantic, more discerning than pedagogic. If a document has to be looked into to ascertain therefrom whether the cause of action as pleaded in the plaint is justified, and no other material is necessary for such exercise, the court can – or rather, should – complete the exercise in one go rather than postpone the consideration to a trial and invite the attendant time-consuming process to intervene. But the approach must be cautious and the exercise limited only to such cases where the cause of action is founded on a document and it depends on no other material or further evidence.

26. Learned senior counsel for the petitioner lastly refers to Mitra's Legal and Commercial Dictionary, Fifth Edition, to argue that a statutory body means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force.

27. Learned counsel appearing for the plaintiff/opposite party submits that a Bishop is elected under the constitution of the petitioner. The relationship between the Bishop and the Church is not a "master-servant" relationship.

28. It is argued that the plaint was clear enough on the aspect of 'election' of a Bishop and his 'installation' as a Bishop to his post. In paragraph no. 8 of the plaint, such terms have been used, as also at other places of the plaint, such as paragraph nos. 10, 11, 22, 31, 33, etc.

29. The process of extension of service of a Bishop is preceded by recommendations by the Appraisal/Review Committee for extension of service of Bishops, as is evident from Agenda no. 523, clause (d) of the minutes of the 100th meeting of the Executive Committee of the Synod of the petitioner, held on 2nd and 3rd August, 2017.

30. From Agenda no. 547, it is seen that the case of the opposite party for extension of service for one year, with effect from 19th August, 2017, was recommended to the Executive Committee of the CNI Synod by the Appraisal/Review Committee. Under the same agenda, it was recorded in the minutes that the age of superannuation of CNI Bishops and some others, were extended to 68 years across the board. No exception was made for Bishops working on extension. However, by a letter dated August 22, 2018, the Synod of the petitioner intimated to all members of the Executive Committee and others concerned that the extended term of the opposite party expired on August 18, 2018 since the Synod did not receive any request for further extension from the opposite party. On such ground, extension of service was refused to the opposite party.

31. It is argued by learned counsel for the opposite party that there was no scope or requirement of asking for, or grant of, such extension, as erroneously recorded in the letter dated August 22, 2018, in view of the specific decision, as reflected from the

minutes of the 100th meeting of the Executive Committee of the Synod, to extend the tenure of service universally to 68 years.

32. Since it was specifically held in the said meeting that the superannuation age of all CNI Bishops would be 68 years, despite one of the specific agenda being the recommendation for extension of service of Bishops, including the opposite party, such agenda was not proceeded with further.

33. In such view of the matter, it is argued that the plaint disclosed a strong cause of action and was rightly refused to be rejected by the trial court.

34. Learned counsel for the opposite party next places reliance on the appointment letter of the opposite party dated June 1, 2008, wherein it was specifically mentioned that an election had been held, by virtue of which the opposite party was elected as a Bishop. Thereafter he was duly consecrated and installed in the Diocese to exercise the powers of a Bishop of the Diocese. It was further mentioned that the powers conferred on the opposite party would always be subject to the constitution of the CNI.

35. Next placing reliance on clause 7 of sub-section B of Section VIII, it was pointed out that the Diocesan Bishop shall be elected by an electoral body and that the election would take place and shall be by the whole electoral body.

36. Clause 5(b) of sub-section B also provided that Bishops shall be appointed and shall perform their functions in accordance with the constitution of the Church.

37. This apart, several paragraphs of the plaint, including paragraph nos. 7, 8, 9, 10 and 11, referred to 'installation' of the Bishop, which cannot be the norm for any other employee.

38. Next referring to Section XII, sub-section B, it was submitted that certain minimum qualifications were required for one to be elected as a Bishop. People were elected for the said post from a pool of presbyters of the petitioner having a minimum pastoral experience of certain years and having attained a certain age. The Bishop had to have a Bachelor of Divinity degree acquired from a Theological College or University (or equivalent degree) recognized by the Executive Committee of the Synod.

39. Sub-section D of Section XII, clause 3, provides for consecration of the Bishop-elect/designate, if not already consecrated, and provides for issuance of an instrument of election and appointment to him/her. Section IV clauses 4A and B provide for General Secretaries and Treasurers to be either full time or honorary office-bearers of the Synod, who would be elected in the ordinary meeting of the Synod by ballot for a period of three years. The terms of service of General Secretaries and Treasurers would be governed by the terms of employment or any amendment thereto, as approved by the Synod. It is argued that similar provisions do not exist for Bishops and as such Bishops cannot be equated with other ordinary employees of the Church.

40. Learned counsel for the opposite party submits that the Specific Relief Act, 1963 is a procedural law and as such the amendment of 2018 to Section 14 of the said Act has retrospective effect by default. The current section, as it stands after amendment, does

not contemplate a bar to specific performance of contracts dependent on the volition of the parties and as such cannot take into its fold contracts of personal service.

41. Referring to a larger issue, learned counsel for the opposite party then places the provisions of the old Specific Relief Act of 1877. The said Act, being the predecessor of the current Act of 1963, contained several illustrations to Section 21, which section was the predecessor of the current Section 14. Section 21 of the 1877 Act, along with its illustrations, is set out below:

"Specific Relief Act, 1877:-

(b) Contracts which cannot be specifically enforced.

21. Contracts not specifically enforceable:- *The following contracts cannot be specifically enforced.*

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the court cannot enforce specific performance of its material terms;

(c) a contract the terms of which the court cannot find with reasonable certainty;

(d) a contract which is in its nature revocable;

(e) a contract made by trustees either in excess of their powers or in breach of their trust;

(f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company which is in excess of its powers;

(g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(h) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it, sues in respect of any subject which he has contracted to refer the existence of such contract shall bar the suit.

Illustrations

to Clause (a):- *A contracts to sell, and B contracts to buy, a lakh of rupees in the four percent loan of the Central Government;*

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000/- per chest;

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000 and to honour A's drafts to that amount;

the above contracts cannot be specifically enforced for in the first and the second, both A and B, and in the third, A would be reimbursed by compensation in money.

to clause (b):- *A contracts to render personal service to B; A contracts to employ B on personal service; A, an author, contracts with B, a publisher, to complete a literary work;*

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B, each names a valuer, but before the valuation is made, A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice and thence proceed to London freight to the paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease;

A and B contracts that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery.

A contracts with B that in consideration of Rs. 1000/- to be paid to him by B, he will paint a picture for B;

A contracts with B to execute certain works which the court can superintend;

A contracts to supply B with all the goods of a certain class which B may require;

A contracts with B to take from B a lease of a certain house for a specified term at a specified rent "if the drawing-room is handsomely decorate", even if it is held to have so much certainty that compensation can be recovered for its breach;

A contracts to marry B;

the above contracts cannot be specifically enforced.

to Clause (c):- *A, the owner of a refreshment room, contracts with B to give him accommodation therefor the sale of his goods and to furnish him with the necessary appliances. A*

refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to Clause (d):- *A and B contract to become partners in certain business, the contract not specifying the duration of the proposed partnership. The contract cannot be specifically performed, for if it were so performed, either A or B might at once dissolve the partnership.*

To Clause (e):- *A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.*

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rs. 30,000/- The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced.

to Clause (f):- *A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.*

to Clause (g):- *A contracts to let for twentyone year to B the right to use such part of a certain railway made by A as was upon B's land and that B should have a right of running carriages over the whole line on certain terms and might require A to supply the necessary*

engine-power and that A should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to Clause (h):- *A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C though supposed by A and B to be alive was dead. The contract cannot be specifically performed***."**

42. It is pointed out that clause (b) of Section 21 was akin to the current Section 14(1)(b). The illustration corresponding to Section 21 (b) of the 1877 Act excluded contracts to render personal service from the purview of specific enforcement. As such, the said illustration was the justification for the line of decisions of the Supreme Court as well as High Courts as to there being a bar to a suit for specific performance of contracts of the nature of personal service.

43. Since the said illustration was removed from the 1963 Act, it is argued that there remains no justification for precluding civil courts from taking up suits for specific performance of contracts of a personal nature. The only embargo in that regard, as stipulated in Section 21(b) of the 1877 Act itself shorn of the illustration, as well as in Section 14(1)(b) of the 1963 Act, both of which refer to contracts which run into minute or numerous details or so dependent on the personal qualifications or volition of the parties or otherwise from its nature are such that the court cannot enforce specific performance of their material terms.

44. Hence, the test would be whether the present contract fell within the contemplation of Section 14 (1) (b) of the 1963 Act.

45. It is argued that the office of the Bishop is not one which is either dependent on personal qualification or runs into minute or numerous details which cannot be enforced specifically by the court. As regards volition, the concept of 'master-servant' relationship is now obsolete and neither legally nor socially a tenable concept. It is argued that the length or condition of the post of a Bishop is not dependent on the whims or volition of the petitioner but is guided by the constitution of the Church, which has a statutory flavour.

46. Learned counsel for the opposite party highlights the opinion of Justice P.N. Bhagwati in *(1976) 2 SCC 58 [Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others],* which opened up the concept of 'personal service'. Justice Bhagwati observed in the said judgment that such concept sprang from the illustration to clause (b) of Section 21 of the Specific Relief Act, 1877 which had been omitted in the Specific Relief Act, 1963. The effect of such omission might be a point requiring consideration some day by the Supreme Court, in the opinion of Justice Bhagwati. It was observed by His Lordship that the rationale behind the principle that law frowns on specific enforcement of a contract of personal service was stated in the *Locus Classicus of Fry, L.J. in De Francesco vs. Barnum,* where it was observed that for his own part, Lord Justice Fry should be very unwilling to extend decisions the effect of which was to compel persons who are not desirous of maintaining continuous personal relations with one another to

continue those personal relations. His Lordship had a strong impression and a strong feeling that it was not in the interest of making that the rule of specific performance should be extended to such cases. His Lordship thought that the courts were bound to be jealous, lest they should turn contracts of service into contracts of slavery; and therefore, speaking for himself, His Lordship should lean against the extension of the doctrine of specific performance and injunction in such a manner.

47. This rationale obviously, according to Justice Bhagwati, could have application only where the contract of employment was a contract of personal service involving personal relations. It could have little relevance to conditions of employment in modern large-scale industry and enterprise or statutory bodies or where there is professional management of impersonal nature. It was difficult to regard the contract of employment in such case as a contract of personal service, save in exceptional cases. There was no reason, according to Justice Bhagwati, why specific performance should be refused in cases of this kind where the contract of employment did not involve a relationship of personal character. It must be noted that all these doctrines of contract of service as personal, non-assignable, unenforceable, and so on grew up in an age when the contract of service was still frequently a "personal relation" between the owner of a small workshop or trade or business and his servant. The conditions had now vastly changed and those doctrines had to be adjusted and reformulated in order to suit needs of changing society. We cannot doggedly hold fast to those doctrines which correspond to the social realities of an earlier generation far removed from ours. We must rid the law

of all these anachronistic doctrines and bring it in accord "with the felt necessities of the time", observed Justice Bhagwati.

48. Justice Bhagwati raised an important question: for whom it would be worse and for whom it would be better. Where, in a country like ours, large numbers of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service may have to remain without means of subsistence for a long period of time. Damages equivalent to one or two months' wages would be poor consolation to him. They would be wholly insufficient to sustain him during the period of unemployment following upon his discharge. The provision for damages for wrongful termination of service was adequate at a time when an employee could without difficulty find other employment within the period of reasonable notice for which damages were given to him. But in conditions prevailing in our country, damages are a poor substitute for reinstatement: they fall far short of the redress which the situation requires. To deny reinstatement to an employee by refusing specific performance in such a case would be to throw him to the mercy of the employer: it would enshrine the power of wealth by recognizing the right of the employer to fire an employee by paying him damages which the employer could afford to throw away but which would be no recompense to the employee.

49. It is submitted by learned counsel for the opposite party on the basis of the aforesaid observations of Justice Bhagwati that it was high time to do away with the concept of

personal service being a bar to specific performance, since there was no master and servant relationship in vogue in most cases, in particular in the case at hand.

50. Learned counsel for the opposite party places reliance on a judgment reported at *1969 (2) SCC 838 [Executive Committee, U.P. Warehousing Corporation vs. Chandra Kiran Tyag]*, wherein the scope for consideration pertained to a declaration relating to continuity of service. The said judgment quoted *Viscount Kilmuir, L.C.* in distinguishing a case from the ordinary master and servant case. It was observed that since the removal of the plaintiff's name from the register was in law a nullity, it was not a straightforward relationship of master and servant. Normally and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. But, since the said case was concerned with a statutory scheme of employment giving the dock worker a status, the concept of master-servant relationship could not be invoked and the order of termination was treated to be void, not being in accordance with the statute.

51. It was held that when a statutory status is given to an employee and there had been a violation of the provisions of the statute while terminating the services of such an employee, the latter would be eligible to get the relief of a declaration that the order was null and void. As such, it is argued by the opposite party that when there is a statutory status/flavour, the contract could not be one of personal service. In the present case, it is argued, the service of the Bishop was governed by the provisions of the constitution of

the Church and as such there was no master and servant relationship simpliciter between the petitioner and the opposite party.

52. Learned counsel next cites a decision reported at *(2018) 9 SCC 672 [Mathews Mar Koorilos (Dead) and another vs. M. Pappy (Dead) and another],* wherein it was held, on the basis of previous decisions therein, that the constitution of the Malankara Orthodox Syrian Church was enforceable and the only method to change the management was to amend the Constitution of 1934 in accordance with law. It was not open to the Parish Churches to even frame bye-laws in violation of the provisions of the constitution. The prime jurisdiction with respect to the temporal, ecclesiastical and spiritual administration of the Malankara Church was held to be vested with the Malankara Metropolitan and other authorities appointed by it.

53. It is argued that a similar supremacy ought to be attributed to the constitution of the petitioner. The constitution was evolved and adopted over a long period of time and was as much historical as having a statutory status.

54. Learned counsel for the opposite party submits that the classical view, as laid down in the decision reported at *AIR 1956 SC 404 [Shambu Nath Mehra vs. State of Ajmer]*, was that an illustration does not exhaust the full content of the section but equally it can neither curtail nor expand its ambit. However, the other end of the spectrum has since been reached by general judicial opinion, particularly as reflected in the decision reported at (*1996) 8 SCC 128 [Dr. Mahesh Chand Sharma vs. Raj Kumari Sharma (Smt) and others].* It

was held in the said judgment that not only are illustrations to the section parts of the section but they help to elucidate the principle of the section.

55. With reference to Odgers' Construction of Deeds and Statutes (Fifth Edition), learned counsel submits that it was not the general practice to append illustrations to sections of British Acts of Parliament. Indian and Colonial laws were, however, full of them. In the said context, it was also quoted from the Straits Settlements Ordinance (III of 1893), which generally corresponds to the Indian Evidence Act, in the construction of the Evidence Ordinance it was the duty of a court of law to accept, if it can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they did not square with ideas, possibly derived from another system of jurisprudence as to the law with which they or the sections deal and it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the legislature as helpful in the working and application of the statute, should not be thus impaired.

56. In support of the proposition that the Specific Relief Act is a procedural law, learned counsel for the opposite party cites a judgment reported at *(2007) 7 SCC 125 [Adhunik Steels Ltd. vs. Orissa Manganese and Minerals (P) Ltd.].*

57. Learned counsel also cites a decision reported at *AIR (30) 1943 Cal 417 [Moulvi Ali Hossain Mian and others vs. Rajkumar Haldar and others]*, where a Full Bench of this court held in similar line, as to the Specific Relief Act, 1877 embodying what in essence was adjective law and that the substantive law must be looked for elsewhere.

58. Placing the provisions of Section 14, as amended, by the Specific Relief (Amendment) Act, 2018, which came into effect from October 1, 2018, learned counsel argues that volition is no longer a yardstick to preclude a suit for specific performance and as such the legal bar argued by the petitioner falls flat.

59. In reply, learned senior counsel for the petitioner argues that the terms 'election' and 'consecration' are not special and are mere precursors to an appointment of a Bishop. Such formalities cannot change the character of appointment of the Bishop, particularly in view of the specific admission in the plaint and the provisions of the constitution, which admittedly governs the service, which indicate that the appointment of the Bishop is squarely an employment in the nature of personal contract.

60. The constitution of the petitioner does not have a statutory flavour and is not a statute by any stretch of imagination. Even the provision of the age of superannuation is not there in the constitution itself but only a decision of the Executive Committee, subject to discretion of the members of the Committee. The CNI (petitioner) is not a statutory body and as such the exceptions to the rule of preclusion of specific performance do not apply at all. It is argued by learned senior counsel that the concept of the bar in cases of personal service was reiterated by the Supreme Court in several judgments, which were

cited and were recorded in the impugned order. As such, it cannot now be argued that the observations of justice Bhagwati, which did not lay down the law but merely pondered on the question of the nature of personal service, took away the binding effect of the plethora of judgments in the field, which reiterate that contracts of personal nature could not be specifically enforced, even under Section 14 (1) (b) of the 1963 Act.

61. As such, learned senior counsel for the petitioner argues that the plaint of the present suit ought to have been rejected outright.

62. The questions which fall for consideration in the present case are as follows:

(i) Whether a declaratory suit in respect of a contract of personal service is barred under Section 14 (1) (b) of the 1963 Act;

(ii) Whether the appointment of the opposite party as a Bishop by the petitioner was a contract of personal service;

(iii) Whether the 2018 amendment to the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act") is applicable to the present case;

(iv) Whether the plaint should be rejected in the instant case due to bar of law or non-disclosure of cause of action.

63. Taking up the first question first, learned counsel for the opposite party raised an interesting question as to the effect of absence of the illustration to Section 21 (b) of the 1877 Act, which was the forerunner of Section 14 (1) (b) of the 1963 Act, in the latter Act.

64. It is rightly argued that the expressions "contracts to render personal service" and "contracts to employ on personal service" were apparently the basis of the line of judgments, including the three-judge Bench decision of the Supreme Court in *(1976) 2 SCC 58*, which held that contracts of a personal nature were not specifically enforceable.

65. The majority view of Khanna and Fazal Ali, JJ in the said judgment iterated that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service, can be deemed to be in service against the will and consent of the employer. The rule was held to be subject to the three well recognized exceptions –

(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India;

(ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and

(iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

66. Bhagwati, J, however, while agreeing with the final order proposed by the majority in the Bench, gave his own reasons for reaching that conclusion. His Lordship, while doing so, expressed doubts as to the effect of the omission of the illustration to Section 21 (b) of the 1877 Act in Section 14 of the 1963 Act, hinting that the basis of the principle that a contract of employment cannot be specifically enforced was that ordinarily it is a contract of personal service and, as pointed out in the first illustration to clause (b) of Section 21 of the 1877 Act, a contract of personal service cannot be specifically enforced.

67. His Lordship further went on to observe that this rationale can have application only where the contract of employment is a contract of personal service "involving personal relations" and it can have little relevance to conditions of employment in modern large-scale industry and enterprise or statutory bodies or public authorities where there is professional management of impersonal nature. It was held that these doctrines grew up in an age when the contract of service was still frequently a "personal relation" between the owner of a small workshop or trade or business and his servant. The conditions have now vastly changed and these doctrines have to be adjusted and reformulated in order to suit needs of a changing society. As per Bhagwati, J, we cannot doggedly hold fast to these doctrines which correspond to the social realities of an earlier generation far removed from ours and we must rid the law of these anachronistic doctrines and bring it in accord "with the felt necessities of the time".

68. The three exceptions formulated by the majority of the bench were held by Bhagwati, J not to be exhaustive. The expression 'statutory body' used in the third exception, as

indicated above, was held by His Lordship to be not only a body or authority created by statute but even a body or authority created under a statute.

69. It is interesting to note that the majority of the Bench, while holding the same, explained that a statutory body must be created under the statute and owes its existence to the statute. This is distinct from an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. The adoption of certain statutory provisions by itself is not sufficient to clothe the institution with a statutory character. The institution must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

70. The majority view principle above was reiterated in *Pearlite Liners (P) Ltd. (supra)*. However, the two-judge bench factored in that there were no written terms of contract and, in the absence of any term prohibiting transfer, the disobedience of the employee in that regard amounted to insubordination, raising the possibility of termination of service, which decision was held to rest purely within the discretion of the management. It was also held that an employer cannot be forced to take an employee with whom relations have reached a point of complete loss of faith between the two.

71. In *State Bank of India & Ors. v. S.N. Goyal [(2008) 8 SCC 92]*, cited in the court below, where again the principle was reaffirmed, the two-judge bench held that where the relationship of master and servant is purely contractual, it is well-settled that a contract of personal service is not specifically enforceable.

72. In *Nandganj Sihori Sugar Co. Ltd., Rae Bareli & Anr. v. Badri Nath Dixit & Ors.* , reported at *(1991)3 SCC 54* and cited in the court below, the same principle was repeated, but with the usual rider, courts do not 'ordinarily' interfere in case of contracts of a 'personal character'. A repetition of the principle also found place in another judgment cited in the trial court, reported at *(2011) 13 SCC 99 (Secretary, A.P.D. Jain Pathshala & Ors. v. Shivaji Bhagwat More & Ors.)*, based on *Vaish Degree College v. Lakshmi Narain (supra)*.

73. The common thread of the above judgments is that the contract must be of a personal character and there must be a "master-servant" relationship between the parties.

74. The doubt raised by Bhagwati, J, as discussed above, ought also to be taken into consideration in the context of social dynamics, as depicted graphically in His Lordship's comments in *Vaish Degree College v. Lakshmi Narain (supra)*, in conjunction with the caveats in the subsequent judgments, that for the bar to operate, the relationship must be of master and servant and the contract must be of a 'personal nature'. In *Pearlite (supra)*, the insubordination of the employee was also taken into consideration.

75. Keeping in view the deletion of the Illustrations to Section 14 in the 1963 Act, the expression 'personal service' used in subsequent judgments cannot be taken in an unfettered sense but has to be read down and moderated by the expressions 'master and servant relationship' and 'contracts of personal nature'. The language of the parent provision gains more importance in the backdrop of absence of the Illustrations-in-question.

76. The key terms in Section 14 (1) (b) of the 1963 Act, before the 2018 amendment, in the present context, are "runs into such minute or numerous details", "so dependent on the personal qualifications or volition of the parties" and "or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms".

77. As such, question (i), as formulated above can be answered thus: a declaratory suit in respect of a contract of personal service is barred under Section 14 (1) (b) of the 1963 Act only if it satisfies one or more of the conditions stipulated in Section 14 (1) (b) of the said Act, and not otherwise.

78. To answer question (ii), we need to examine the cardinal characteristics of the appointment of the opposite party as a Bishop by the petitioner.

79. The opposite party himself, in his letter dated August 22, 2018 issued to the Synod of the CNI, liberally used expressions like "continued service", "service stipulations", "tenure of service", "supersession of my service", "extension of service", " retirement" and

relied upon the "legal and legitimate right" vested in an employee to remain in service till the age of superannuation.

80. Clause 14 (a) of Section IV of the constitution of the petitioner vested in the Synod the authority to arrange for the election, appointment, transfer, discipline, suspension, termination of services and retirement of Bishops and Assistant Bishops.

81. Clause 23 of the same Section speaks about salaries of the Diocesan Bishop and other employees appointed by the Synod, their provident funds, superannuation funds and gratuity scheme and/or other emoluments.

82. Clause 7 of Section VII stipulates that the moderator shall grant Bishops leave of absence from their Diocese within the terms and Service Rules for Bishops, as approved by the Executive Committee.

83. Section VIII empowers the moderator to receive letters of resignation from the Bishop and other office bearers of the Synod for action by the Executive Committee and shall inform the Diocese concerned immediately.

84. Clause 10 of Section X empowers the Executive Committee to take necessary action regarding the election, appointment, installation, suspension, termination of services, retirement, resignation and transfer of Diocesan Bishops according to rules framed by it.

85. As such, undoubtedly the Bishop works as an employee of the petitioner and is subject to all rigours and benefits attributable to such employment. The religious hierarchy of the petitioner and the spiritual status of the Bishop in such hierarchy could not be an

indicator of whether the Bishop is an 'employee' of the petitioner or not. The status of the Bishop vis-à-vis the petitioner, inasmuch as the former's function at the Church is concerned, is governed by the provisions of the constitution, which admittedly regulates the Bishop's position and the letter of appointment of the Bishop and the communication by the Bishop for extension of his service. Although the said constitution does not have 'statutory flavour' or statutory sanction, it is admittedly the governing charter of the entitlements and duties of the Bishop as an employee, which substitutes the fiat of a 'master' in a master-servant relationship and makes it mandatory that the constitutional provisions, and not the volition or diktat of the parties, are followed in construing the terms and conditions of service. An additional factor which has to be considered is the body of averments of the opposite party himself in his plaint.

86. The aforesaid documents unerringly indicate that the Bishop was an employee in service of the petitioner. The terms 'installation' and 'consecration' merely comprise of ornamental paraphernalia preceding and attending the appointment of the Bishop, which may have spiritual connotations but have no role to play in construing the nature of the service. The ceremonious nature of such expressions and/or the activities associated therewith cannot be equated with an elevation of the Bishop's post to a pedestal higher than that of an employee.

87. Whatever may be the status of the Bishop in the spiritual hierarchy of the Church, the same cannot be a factor to be considered while deciding the issue at hand.

88. The question is, whether such service of the Bishop can be labelled as a 'personal service'.

89. In most of the judgments cited by both the sides, before and after coming into force of the 1963 Act, 'personal service' has been qualified by 'master-servant relationship'. In certain cases, the Supreme Court also considered the recalcitrance of the employee-in-question to hold that the employer could not be forced to retain such a delinquent in service.

90. As such, not only were the facts of each case relevant considerations, a master-servant relationship was found to exist in the said cases.

91. The provisions of the constitution of the petitioner, which govern the appointment of the Bishop, contain several indicators that the service was governed by the rules framed, either by the Executive Committee, or the provisions of the constitution itself.

92. The petitioner's argument that since the Executive Committee could decide on the fate of the service of Bishop, there exists a master-servant relationship between the parties, cannot be accepted. It is not the body of persons comprising the Executive Committee or the petitioner itself (which is, in any event, a juristic person) who decides the fate of the opposite party at their whims. The rules framed by the Executive Committee under the authority granted by the constitution of the petitioner and the provisions of the constitution are the determinants of whether the Bishop's service could be revoked.

93. Although the concept of 'master-servant relationship' has undergone an evolution with changing times and is now governed by the concept of employer-employee relationship, the element of volition and personal nature of service, as stipulated in Section 14(1)(b) of the 1963 Act and in the cited judgments, have to be taken into account while interpreting the concept of 'personal service'. Despite master-servant relationship being no longer the whims and fancy of the employer in dealing with the employee as it used to be in the hoary past, there still has to be an ingredient of the volition of the employer and a personal nature of service to invoke the bar stipulated in Section 14(1)(b). Since in the present case, the recalcitrance of the opposite party is not an issue at all, but the bone of contention being the superannuation age of the opposite party, the concepts of master-servant relationship and personal service cannot be imported to define the relationship between the parties.

94. Moreover, the service of the Bishop with the petitioner is not dependent merely on the volition of the parties and the nature of service rendered by the Bishop is not of a personal nature. No personal skill or personal ingredient, exceptional from all other jobs, is present as an element of the Bishop's functions.

95. Although the Bishop is selected on the basis of certain special criteria from a pool of Presbyterians, it is a common order of the day to choose employees, whatever may be their position in the hierarchy of an institution, from a pool of people having certain qualifications. Competence levels vary from employee to employee, as between one Bishop and another, but the same cannot be a decisive factor in attributing a personal

ingredient to the post of the Bishop. The nature of job performed by the Bishop is thus not a 'personal service' insofar as the present dispute is concerned.

96. However, a word of caution has to be incorporated here, as to the interpretation of personal service not being a uniform concept in case of employment. The various components of a service which come into play and the nature of the dispute involved in a legal action are the true determinants of whether such component or dispute involves a personal aspect of the service. There can be various shades and components of a job, some being personal in nature and involving the volition of the parties and others governed by the general rules or laws/bye-laws governing all such employees uniformly. For the former, a job/post can be a 'personal service' while for the latter, not so.

97. As far as the present matter is concerned, as held above, the service of the Bishop is not a personal service as contemplated in the decisions rendered on Section 14(1)(b) of the Specific Relief Act, 1963.

98. Taking up for consideration the third question involved in the present case, the 2018 Amendment to the Specific Relief Act, 1963 came into force from October 1, 2018. The suit was undoubtedly filed prior to the commencement of operation of the Amendment Act. However, a question arises as to the relevant date for ascertaining the applicability of the amendment – the date of filing of the suit or the date of passing of the decree. In the event the date of filing of the suit was the relevant date, the 2018 Amendment would not be applicable to the present case.

99. However, the language of Section 14 of the 1963 Act indicates that the relevant date would be the date of passing of the decree, since Section 14(1) commences with the phrase, "The following contracts cannot be specifically enforced ….."

100. The question of enforcement comes only on the date of passing of the decree and not the institution of the suit. If the date of filing of the suit was the relevant date, the language of Section 14(1) would be something akin to: "no suit can be filed for specific performance of the following contracts …."

101. Hence, the relevant date is the date of passing of the decree. As such, the 2018 Amendment becomes applicable to the present *lis,* since the amendment came into force during pendency of the suit.

102. Hence, the 2018 Amendment to the 1963 Act is applicable to the present case and the third issue is decided in the affirmative.

103. Taking up the fourth question which falls for consideration in the present case, there is strong doubt with regard to the contention that the suit is not maintainable due to a bar of law or non-disclosure of cause of action.

104. Even keeping in mind the ratio laid down in the co-ordinate Bench judgment in *AIR 2017 Cal 98 [Smt. Sumana Venkatesh Nee Sur vs. Sri Susanta Kumar Sur and others]*, in the present case, the decision on the moot question as to whether the suit is barred by Section 14 (1) (b) of the 1963 Act is not dependent merely on the interpretation of one document, but has to be undertaken upon a careful consideration of several documents,

including the letter of appointment of the opposite party, the relevant clauses of the constitution of the CNI, the correspondence between the parties and otherwise, as well as the circumstances attending the service of the opposite party, which might be subject-matter of evidence. In such circumstances, shutting out the plaintiff/opposite party at the preliminary stage by rejecting his plaint would be unjust, if not unlawful.

105. The absence of the illustrations to Section 21 of the 1877 Act in the corresponding Section 14 of the successor Act of 1963 has to be attributed some meaning, to carry out the intention of the legislature in so omitting. The obvious and plain consequence of such deletion, in the context of the present *lis*, is that a contract of 'personal service', *ipso facto*, cannot be the sole factor to invoke the bar of Section 14(1)(b), but the provisions of Section 14 (1) of the 1963 also have to be looked into.

106. This, coupled with the discussions aforesaid, which also cast a doubt as to whether the Bishop's service is a 'personal service' at all and as to whether the ingredient of volition is at all a relevant factor after the 2018 Amendment, demands that the plaint should not be rejected at the outset, thereby precluding the plaintiff/opposite party from canvassing the dispute raised. Several allegations made in the plaint, on a plain and meaningful reading, disclose sufficient cause of action to institute the action. There is no bar of law as well, *ex facie* evident from the plaint, to justify the rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

107. In such view of the matter, the fourth issue is decided in the negative. It is held that the plaint should not be rejected in the instant case.

108. Accordingly, C.O. No. 863 of 2019 is dismissed on contest, thereby affirming the impugned order.

109. However, it is made clear that the issue of maintainability of the suit, as taken by the defendant/petitioner in the court below, has not been finally decided either by the impugned order or by this court. As such, the said issue will be decided finally by the trial court at the final hearing of the suit, without being influenced unduly by any of the observations made herein or in the order impugned herein.

110. There will be no order as to costs.

111. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)