

Ganpat

Vs

Returning Officer and Others

Civil Appeal No. 348 of 1973

(A. Alagiriswami, R. S. Sarkaria JJ)

04.12.1974

JUDGEMENT

ALAGIRISWAMI, J. –

1. In the election to the Maharashtra Legislative Assembly held in March 1972 to fill up a seat from the North Nagpur constituency reserved for members of the Scheduled Castes the second respondent was declared elected. The appellant filed an election petition questioning the election. That petition having been dismissed by the High Court of Bombay (Nagpur Bench) this appeal has been filed by the appellant.

2. In that election as many as 19 persons filed their nomination papers. Nine of them withdrew leaving respondents Nos. 2 to 10 and the appellant in the field. One of them who withdrew was the eleventh respondent. Ranjit Meshram, with whom we will have to deal later. In the election the second respondent obtained 22,993 votes, the appellant obtained 21,135 votes, the sixth respondent obtained 16,123 votes and the ninth respondent 2,590 votes. It is unnecessary to refer to the other respondents or the votes obtained by them because the arguments before this Court have been confined to respondents Nos. 2, 6 and 9. As many as 14 issues were framed for decision of which as far as the arguments before this Court are concerned, only issues Nos. 9 and 10 survive. They are set out below :

9. (a) Was the notice of withdrawal (document No. 5) tendered by the respondent No. 11 to the returning Officer a valid one ?

(b) Did the notice of withdrawal (document No. 6) tendered by Shri S. P. Ukey in the prescribed form cure the defect, if any, in the notice of withdrawal (document No. 6) ?

(c) Can these notices be said to be legally tendered as required by Section 37 of the Representation of the People Act, 1951 ?

(d) If not, its effect ?

(e) Has the acceptance of the withdrawal of the respondent No. 11 materially changed the election results

10. (a) Are the respondents Nos. 2 and 4 to 10 converts to Buddhism and have they embraced and professed Buddhism and ceased to be Hindus ?

- (b) If so, were they eligible to contest the election from the Reserve Constituency ?
- (c) If did eligible what is effect ?
- (d) Did the candidature of the respondent No. 6, if he was disqualified on account of the conversion to Buddhism materially affect and alter the election result ?
- (e) What is the effect of not raising the objection about the eligibility of the candidate at the time of scrutiny of the nominations ?

It may be necessary to notice issue No. 13 also because the appellant had prayed not only for setting aside the election of the second respondent but also for his being declared elected from the constituency. Issue No. 9 relates to question of withdrawal by Ranjit Meshram to whom reference has already been made. Issue No. 10 relates to the question as to whether respondents Nos. 2 and 4 to 10 could be said to be members of the Scheduled Castes so as to be eligible to stand for election from this constituency. Though in the petition the question was raised about respondents Nos. 2 and 4 to 10 even in the High Court only the question relating to respondents Nos. 2, 6 and 9 was considered. Before this Court Dr. Singhavi appearing for the appellant concentrated his attention regarding the case of respondents Nos. 2 and 6 and preferred to leave the case of respondent No. 9 alone. This is because next to the respondent No. 2 and the appellant, respondent No. 6 had got the largest number of votes. Even the question regarding respondent No. 6 is only important from the point of view of the prayer in the election petition for declaring the appellant elected after setting aside the election of the second respondent. If the second respondent is found not to belong to a Scheduled Caste no further Scheduled of question will survive. It is only if the second respondent is found to belong to a Scheduled Caste that the question whether respondent No. 6 also is or is not a member of a Scheduled Caste and the appellant could be declared elected would arise at all. We shall first deal with issue No. 10 because that is concerned with the most important question.

3. We must first of all notice the fact that when the nominations were scrutinised the appellant did not object to the nomination papers of respondents Nos. 2, 6 and 9 being accepted on the ground that they were no members of the Scheduled Castes. Though legally there is no bar to the appellant raising that question in the election petition questioning the election of the second respondent his allegation that respondents Nos. 2, 6 and 9 are not members of the Scheduled Castes would be considerably weakened because of his failure to object at the time of the scrutiny of the nomination papers. All the candidates belong to the Nagpur City and all of them belong to the Scheduled Castes, ignoring for the present the question whether they were they were Buddhists. Respondents Nos. 2, 6 and 9 are not ordinary members of the Scheduled Castes. Respondent No. 2 is a doctor married to another doctor and practising in Nagpur City. He sees 60 to 70 patients daily. Respondent No. 6 is an advocate and is seen from the result he is popular enough to get 16, 123 votes and his wife is a doctor. Respondent No. 9 is also a doctor. They must, therefore, be well-known figures in Nagpur or at least among members of the Scheduled Castes. The appellant should certainly have known them personally or at least heard of them. He should have also heard whether they were Hindus or Buddhists. He must have known about their political activity. This is one point if view from which the evidence let in on behalf of the appellant should be considered.

4. The second point is that the movement for members for members of the Scheduled Castes becoming Buddhists in order to get out of the Hindu Society, of which untouchability is an important constituent, seems to have been started by Dr. Ambedkar in 1956 in which year a large number of members of the Scheduled Castes, including Dr. Ambedkar and his wife, publicly

embraced Buddhism. There is a Bhiku Niwas in Nagpur and Buddhist Vandana is held every Sunday. The appellant could have been born many years before 1956 and so they must have been formally converted. There is no allegation and there is no evidence as to when, where and by whom respondents Nos. 2, 6 and 9 were converted to Buddhism.

5. Thirdly, the instances relied on were in the case of the second respondent the part he played in the marriage of his two nieces, Usha and Sushil, whose marriages are said to have been celebrated according to Buddhist rites. He is also alleged to have visited the Bhiku Niwas and taken part in Buddhist Vandana. As regards the sixth respondent the instances given are only that of his own marriage and the marriage of his sister Vimal, both of which are said to have been performed according to Buddhist rites. The question regarding the namkaran ceremonies of the children of the respondents was not argued.

6. Fourthly, we have got to consider this question in the context of Indian society and the place of religious observance in so far as they show what religion they profess.

7. Taking first the case of the second respondent, the date, the place or the circumstances under which he became a convert to Buddhism is not given in the election petition, nor is there any allegation that he himself was married according to the Buddhist rites. He asserts that he is a Hindu, his wife is a Hindu and they were married according to Hindu rites. He is a medical graduate who went to England on a scholarship provided by the Maharashtra Government on the ground that he was a member of the Scheduled Castes. If he was not a member of the Scheduled Castes he certainly ran a serious risk in claiming to be a member of the Scheduled Castes and getting a fairly valuable scholarship enabling him to go to England and there is an equal risk in declaring himself to be a member of the Scheduled Castes even for the purpose of election if he were not one. He further runs the risk of being prosecuted for perjury in giving evidence in the petition claiming to be a member of the Scheduled Castes. It has not been alleged that his marriage was according to the Buddhist rites and we must therefore take his assertion that his marriage was according to Hindu from at its face value. As regards his part in the marriage of his nieces he says he was standing outside and receiving guests while the marriage ceremonies went on inside. The invitation card is, of course, in the form which one would expect a Buddhist to issue. The marriage was of the second respondent's nieces, not of his to issue. The marriage was of the second respondent's nieces, not of his own daughters and the invitation was issued by his brother. The second respondent's name is printed there as one of those joining in the invitation. But it is well known that the names of brothers are usually included in wedding invitations under the head "With the best compliments of". People do not take the permission of those whose names are included in the wedding invitations under that category and it is but natural that the father of the bride should include the name of his brother who as a doctor would be considered to be a prominent member of the community to which the parties belonged. It is true that the second respondent he said that his brother was also a Hindu but on that ground the second respondent's claim that he is a Hindu could not be impugned.

8. There is also one curious feature about these marriages. What exactly constitutes a proper Buddhist wedding is not very clear from the evidence. The extract from the booklet 'Boudhcarya Vidhi' marked as Ext. 100-B refers, apart from recitation of the mantras, to the husband and wife being made either to wear rings or some Sindhur being applied on the head and of tying the sacred thread. But almost all the witnesses also mentioned that the mangal sutra is tied which is a Hindu custom. It also appears from the evidence that at the time of these marriages according to Buddhist rites the pictures of Dr. Ambedkar and Buddha are garlanded. One witness for the petitioner has said that Buddhism is against idol worship which really shows the extent of his ignorance. The

garlanding of Dr. Ambedkar's photograph cannot certainly be a religious part of the ceremony. Even according to the Buddhists marriage is said to be one of the ten Sanskars. Therefore, except perhaps for the garlanding of the pictures of Dr. Ambedkar and Buddha there is very little difference between a wedding according to Buddhist rites and a wedding according to Hindu rites. The mantras which are in Pali or in Sanskrit are not likely to be understood by the majority of the persons. Indeed it is doubtful whether they would recognise the language as Pali or Sanskrit. As regards persons officiating in such marriage, it is said that there are two Bhikus in Nagpur, Dr. Kausalyayan and Medhankar. A Bhiku is a sanyasi and at least in the Hindu society a sanyasi never officiates as a priest in a wedding. So any officiation by a Bhiku in a wedding is apparently something new which the neo-Buddhists in Nagpur or Maharashtra might have adopted. The importance given to Dr. Ambedkar is very significant in this context. He was a great scholar, the chief architect of the Constitution, but also a politician. He seems to have been held in great veneration by the Scheduled Castes particularly in Maharashtra at least by Mahars among them he himself having been born a Mahar. That the Scheduled Castes in general and Mahars in particular should have been very proud that he belonged to their community is natural enough and the respect and the veneration shown to him is also natural. But on that ground we find it difficult to accept that any marriage in which his photograph was garlanded or even a Buddhist Bhiku officiated should be considered to be a wedding according to Buddhist rites. Curiously Medhankar has not been examined in this case. What we say in this respect applies to a considerable extent to the marriages of the sixth respondent as well as his sister.

9. As regards the second respondent visiting the Bhiku Niwas, the explanation given by the second respondent appears to be reasonable enough. His dispensary is near the Bhiku Niwas. He says the he has gone there either as a medical man or on social occasions. His joining the Buddhist Vandana is spoken to only be one of the witnesses, Ramesh Vaidya and we are not prepared to hold on his solitary evidence that the second respondent was taking part in the Vandana. We find the second respondent's evidence on this point as more acceptable. As far as the sixth respondent is concerned there is no evidence about his visiting the Bhiku Niwas or joining the Buddhist Vandana. The evidence is only about his marriage and that of his sister being performed according to the Buddhist rites.

10. This matter has also to be looked at from another point of view. There is evidence in this case that persons who still continue to be Hindus marry persons who have become Buddhists and that in such cases the officiating Bhiku asks them to become Buddhist on the occasion being followed in these marriages even where one of the parties to the marriage is a non-Buddhist. There is no evidence that in such cases the Hindu partner does not profess Hinduism thereafter. There is also evidence that even Hindu Mahars celebrate their marriages according to Buddhist rites - See PW 25's evidence regarding his nephew's marriage. It is very difficult therefore to rely upon such evidence alone to hold that either the second respondent or the sixth respondent are Buddhists. It should also be noted that the sixth respondent also denied that he became a Buddhist. We consider, therefore, that the evidence in this case does not satisfactorily establish that either the second respondent or the sixth respondent ceased to profess Hinduism they having been undoubtedly born as Hindus.

11. In this connection it is necessary to remember that Hinduism is a very broad based religion. In fact some people take the view that it is not a religion at all on the ground that there is no one founder and no one sacred book for the Hindus. This, of course, is a very narrow view merely based on the comparison between Hinduism on the one side and Islam and Christianity on the other. But one knows that Hinduism through the ages has absorbed or accommodated many different practices,

religious as well as secular, and also different faiths. One of the witnesses has described that he considered Buddha as the eleventh Avtar. Indeed there are historians and sociologists who take the view that Buddhism disappeared from India not by any other means but by being absorbed into Hinduism. Therefore if a certain community in a spirit of protest says that they would give up Hinduism and adopt Buddhism it is not likely to make much change either in their beliefs or in their practices. Centuries of habit and custom cannot be wiped out overnight. While in the case of highly educated members who have chosen the new religion the change might make a difference in their attitude and perhaps in their habits and customs, to be vast majority it is likely to make very little difference. Merely because in a public meeting Dr. Ambedkar and Mrs. Ambedkar and a large number of people openly got themselves converted to Buddhism it does not automatically follow that all the members of the Scheduled Castes followed them in their footsteps. It does not even mean that all Mahars, who seem to form the largest element among the neo-Buddhists, became Buddhists. Hinduism is so tolerant and difficult to say whether one is practising or professing Hindu religion or not. Especially when one is born a Hindu the fact that he goes to a Buddhist temple or a church or a Durgah cannot be said to show that they have changed their religion from Hinduism to some other religion. In Tamil Nadu in Nagapatnam there is a Muslim Durgah the majority of pilgrims to which are Hindus. In the same town there is a church Vellankanni called Lourdes of the East after the famous Lady of the Lourdes in France. In Andhra Hindus have names like Mastan Ayya or Hussain Amma named after Muslim saints whose durgahs are their places.

12. For a person who has grown up in Indian society it is very difficult to get out of the coils of the caste system. There are many castes among the Scheduled Castes. Though all of them are tainted with untouchability, some among them claim to be higher than some others, One Knows of instances of "high caste" members of the Scheduled Castes addressing a "low caste" member of the Scheduled Castes in the same way as the ordinary high caste Hindu would address a member of the Scheduled Castes. The Urdu speaking Muslims in the South would rarely inter-marry with Tamil speaking Muslims. We know that the Punjabi Muslims used to look down upon the Bengali Muslims. Till recently Muslims, Hindus and Sikhs used to call themselves as Rajput Muslims, Rajput Sikhs, Muslim Jats and Hindu Jats. Because of the Punjab legislation preventing alienation of agricultural land many Muslims described themselves as agricultural tribes. At least in the South of India till recently there were churches where places were places were separately reserved for Scheduled Caste Christians. To this day one sees matrimonial advertisements which want a Vellala Christian bride or Nadar Christian bride. All this is merely to indicate the difficulty of persons getting out of the caste customs and the mentality generated thereby. The monstrous case of untouchability has got to be eradicated. It has got to be eradicated not merely by making constitutional provisions or laws but also by eradicating it from the minds and hearts of men. For that it is even more important that members of communities who are untouchable should assert their self-respect and fight for their dignity than that members of the other communities should forget about it. Fortunately things are changing. In cities and bigger towns it can be said to have almost disappeared. One rarely knows whether the other person he meets is or is not a member of the Scheduled Castes and no one bothers about it these days. The oppression which we read of sometimes in newspapers of the Scheduled Castes by the higher castes in villages are really manifestation of the conflict between agricultural labour or the agricultural serfs, as the members of the Scheduled Castes mostly are, on the one side and the land-holding class on the other. It is wrong to describe them as oppression of the Scheduled Castes by the higher castes. If in these circumstances some members of the Scheduled Castes in their protest against the system of untouchability resort to desperate measure to erase the indignity of untouchability one cannot blame them. But whether it produces any result is a different question, however well-meaning such efforts

may be. There may be other members of the community equally educated and equally conscious of the indignity of their being branded as untouchables who might still feel the way to remove untouchability is not by changing one's religion. We have evidence in this case that people who claim themselves to have become Buddhist have taken advantage of scholarships and other facilities granted by Government to members of Scheduled Castes. Whether such concession to members of Scheduled Castes should also be extended to members of those castes who have changed their religion is a different question. Whether the Scheduled Castes Order should also describe such persons as members of the Scheduled Castes is very relevant to the present question. We are of opinion that the Scheduled Castes Order proceeds on a sound basis. The attempt of persons who have changed their religion from Hinduism to Buddhism, who still claim the concessions and facilities intended for Hindus only shows that otherwise these persons might get a vested interest in continuing to be members of the Scheduled Castes. In course of time vested interest are created in continuing to be members of Scheduled Castes as in continuing to be members of Backward Classes. It is from the point of view of discouraging that tendency that the provision of the Scheduled Castes Order seems to be a proper one.

13. We have said all the merely to show that this is not a case of black and white but a grey area where customs and habits of centuries along with some new ideas co-exist and it difficult to say from a man's attitude in respect of certain question whether he is a Hindu or a Buddhist. Religion is essentially a highly personal matter and there the open assertion by a person especially an educated member of the society about the religion he professes should be given considerable weight over the interested testimony of others based on stay instances. We would, therefore, in agreement with the High Court hold that the respondents Nos. 2, 6 and 9 are not Buddhists but continue to be members of the Scheduled Castes.

14. As regards the question of withdrawal by Ranjit Meshram the evidence of RW 2, the Returning Officer, shows that he knew Ranjit Meshram and that Ranjit gave the withdrawal letter, Ext. 70. As regards Ext. 69, of course, he is not quite sure. But his evidence that he knew Ranjit Meshram and that Ranjit Meshram himself gave the withdrawal letter Ext. 70 stands unrebutted. He is not able to remember clearly the circumstances under which he made the endorsement in Ext. 69 that it was given by Ranjit Meshram. It does not affect his evidence regarding Ext. 70. No mala fides have been imputed to him and we see no reason why we should not accept his evidence. In view of this and our finding that it has not been established that respondents Nos. 2, 6 and 9 are not professing Hinduism it is unnecessary to discuss the prayer regarding declaring the appellant elected.

15. In the result the appeal is dismissed with the costs of the second respondent to be paid by the appellant.

</html