

The Principal, Guntur Medical College, Guntur and Others

Vs

Y. Mohan Rao

Civil Appeal No. 984 of 1975

(CJI A.N. Ray, P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali, Jaswant Singh JJ)

06.04.1976

JUDGMENT

BHAGWATI, J. -

1. The short question that arises for determination in this appeal is : whether a person whose parents belonged to a scheduled caste before their conversion to Christianity can, on conversion or reconversion to Hinduism, be regarded as a member of the scheduled castes so as to be eligible for the benefit of reservation of seats for scheduled castes in the matter of admission to a medical college.

2. The parents of the respondent originally professed Hindu religion and belonged to Madiga caste which is admittedly a caste deemed to be a scheduled caste in the State of Andhra Pradesh as specified in Part I of the schedule to the Constitution (Scheduled Castes) Order, 1950. They were both converted to Christianity at some point of time which does not appear clearly from the record, but it was the case of the respondent in his writ petition that he was born after their conversion. This was also the assumption on which the arguments proceeded before the High Court and before us, too. The Counsel for the respondent expressed his readiness to argue the case on the same assumption, namely, that the respondent was born after the conversion of his parents, or, in other words, he was born of Christian parents. It appears that in the State of Andhra Pradesh, for the purpose inter alia of admission to medical college, Converts to Christianity are treated as belonging to backward class and, therefore, when the respondent applied for admission to Gandhi Medical College in 1973, he described himself as a member of a backward class. But he did not succeed in getting admission. Thereupon he got himself converted to Hinduism on September 20, 1973 from Andhra Pradesh Arunchatiya Sangham stating that he had renounced Christianity and embraced Hinduism after going through Suddhi ceremony and he was thereafter "received back into Madiga caste of Hindu fold". On the strength of this certificate, claiming to be a member of Madiga caste, the respondent applied for admission to Guntur Medical College and on the basis that he was a member of a scheduled case, he was provisionally selected for admission. But subsequently was cancelled as he was not a Hindu by birth. The Principal apparently relied on note (b) to clause (c) of Rule 2 of the Rules issued by the Government of Andhra Pradesh under G.O. Rt. No. 1315 dated December 4, 1973 for admission to the M.B.B.S. course in government medical colleges for the academic year 1973-74. This note was in the following terms :

No candidate other than Hindu including a Sikh can claim to belong to Scheduled Castes. No candidates can claim to belong to the Scheduled Castes except by birth.

The respondent thereupon preferred a writ petition in the High Court of Andhra Pradesh challenging

the validity of cancellation of his admission on the ground that note (b), which required that a candidate, in order to be eligible for a seat reserved for scheduled caste, should belong to a scheduled caste by birth, went beyond the scope of the Constitution (Scheduled Castes) Order, 1950 and was, therefore, void and the Principal was not entitled to cancel his admission on the ground that he was not a Hindu or a member of a scheduled caste by birth. This ground of challenge was accepted by a Single Judge of the High Court and on appeal, a Division Bench of the High Court also took the same view. In fact, it was conceded before the Division Bench by the learned government pleader appearing on behalf of the State that note (b) was repugnant to the provisions of clause (3) of the Constitution (Scheduled Castes) Order, 1950, since the only requirement of that clause was that in order to be a member of a scheduled caste, a person should be professing Hindu or Sikh religion and it did not prescribe that he should be a Hindu by birth. The State did not succeed in obtaining leave to appeal from the High Court and hence it preferred a special leave petition to this Court. When the special leave petition came up for hearing, there was no decision of this Court dealing with the question as to whether a convert or reconvert to Hinduism can become a member of a scheduled caste and it so, in what circumstances and hence we granted special leave to the State, on the State agreeing that whatever be the result of the appeal, the admission of the respondent will not be disturbed and that the State will, in any event, pay the costs of the respondent. It may be pointed out that since then a decision on this question has been rendered by a Bench of three Judges of this Court to which we shall refer later.

3. It is clear on a plain reading of clause (4) of Article 15 that the State has power to make special provision for scheduled castes and in exercise of this power, the State can reserve seats in a medical college for members of scheduled castes without violating Article 15 or clause (2) of Article 29. The expression 'scheduled castes' has a technical meaning given to it by clause (24) of Article 366 and it means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution.

The President in exercise of the power conferred upon him under Article 341 has issued the Constitution (Scheduled Castes) Order, 1950. Paragraphs (2) and (3) of this Order are material and they read as follows :

2. Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within caste or tribes specified in Part I to XIII of the Schedule to this Order shall, in relation to the States to which these parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.

The schedule to this order in Part I sets out the castes, races or tribes or parts of or groups within castes or tribes which shall in the different areas of the State of Andhra Pradesh be deemed to be scheduled castes. One of the castes specified there is Madiga caste and that caste must, therefore, be deemed to be a scheduled caste. But by reason of clause (3), a person belonging to Madiga caste would not be deemed to be a member of a scheduled caste unless he professes Hindu or Sikh religion at the relevant time. It is not necessary that he should have been born a Hindu or Sikh. The only thing required is that he should at a material time be professing Hindu or Sikh religion. Now, note (b) was interpreted by the Principal of the medical college to require that a candidate, in order to be eligible for a seat reserved for scheduled castes, should be a Hindu by birth. This interpretation

was plainly erroneous because what note (b) required was not that a candidate should be a Hindu by birth but that he should belong to a scheduled caste by birth. But even this requirement that a candidate in order to be eligible for a reserved seat should be a member of a scheduled caste by birth went beyond the provision in clause (3) of the Constitution (Scheduled Castes) Order, 1950 and was rightly condemned as void and no reliance was placed upon it on behalf of the State.

4. The principal argument advanced on behalf of the State was that when the respondent was converted to Hinduism, he did not automatically become a member of the Madiga caste, but it was open to the members of the Madiga caste to accept him within their fold and it was only if he was so accepted, that he could claim to have become a member of the Madiga caste. There was evidence in the present case, contended the State, showing that the respondent, on his conversion to Hinduism, was accepted as a member of the Madiga caste by the other members of that caste and, therefore, he was not at the time of his application for admission a member of a scheduled caste.

5. Now, before we proceed to consider this contention, it is necessary to point out that there is no absolute rule applicable in all cases that whenever a member of caste is converted from Hinduism to Christianity, he loses his membership of the caste. This question has been considered by this Court in *C. M. Arumugam v. S. Rajgopal* ((1976) 1 SCC 863) and it has been pointed out there that ordinarily it is true that on conversion to Christianity, a person would cease to be a member of the caste to which he belongs, but that is not an invariable rule. It would depend on the structure of the caste and its rules and regulations. There are some castes, particularly in South India, where this consequence does not follow on conversion, since such castes comprise both Hindus and Christians. Whether Madiga is a caste which falls within this category is a debatable question. The contention of the respondent in his writ petition was that there are both Hindus and Christians in Madiga caste and even after conversion to Christianity, his parents continued to belong to Madiga caste and he was, therefore, a member of Madiga caste right from the time of his birth. It is not necessary for the purpose of the present appeal to decide this question. We may assume that, on conversion to Christianity, the parents of the respondent lost their membership of Madiga caste and that the respondent was, therefore, not a Madiga by birth. The question is : could the respondent become a member of Madiga caste on conversion to Hinduism ? That is a question on which considerable light is thrown by the decision of this Court in *C. M. Arumugam v. S. Rajgopal*.

6. The main question which arose for decision in *C. M. Arumugam v. S. Rajgopal* was whether S. Rajgopal, who belonged to Adi Dravida caste before his conversion to Christianity, could, on reconversion to Hinduism, once again become a member of the Adi Dravida caste. This Court, after examining the question on principle and referring to the decided cases, pointed out that the consistent view taken in this country since 1886 was that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. This Court observed that there was no reason, either on principle or on authority, which should compel it to disregard this view which has prevailed for almost a century and lay down a different rule on the subject and concluded that on reconversion to Hinduism, S. Rajgopal could once again revert to his Adi Dravida Caste, for he was accepted by the their members of the caste.

7. The reasoning on which this decision proceeded is equally applicable in a case where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste to decide whether or not to admit a person within the caste. Since the caste is a social combination of

persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing members. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste, for, as pointed out by Krishnaswami Ayyanger, J. in Durgaprasada Rao v. Sudarsanaswami (AIR 1940 Mad 513 : ILR 1940 Mad 653 : (1940) 1 MLJ 800), "in matters affecting the well being or composition of a caste, the caste itself is the supreme judge". It will, therefore, be seen that on conversion the Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion the Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold.

8. This view would have ordinarily required us to find whether, on the material on record, it could be said to have been established by the respondent that, on conversion to Hinduism, he was accepted as a member of Madiga caste by the other members of that caste, for it is only if he was so accepted that he could claim to be a member of a scheduled caste. But it is not necessary for us to undertake this inquiry because, as already pointed out, it at been agreed by the State that, whatever be the result of this appeal, the admission of the respondent will not be disturbed.

9. We accordingly dismiss the appeal with costs in favour of the respondent.

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