

R. Palanimuthu

Vs

Returning Officer and Others

Civil Appeal No. 4027 of 1982

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

23.02.1984

JUDGMENT

VARADARAJAN, J. -

1. This appeal by special leave is directed against the judgment of a learned Single Judge of Madras High Court dismissing Election Petition No. 4 of 1980 with costs quantified at Rs 1000. The election petition was filed for declaring the election of the second respondent V. Rangarajan alias V. Rangarajan alias Perumal to the Tamil Nadu Legislative Assembly from No. 157, Uppiliapuram Scheduled Tribes reserved Assembly Constituency in Thuraiyur taluk, Tiruchirapalli district, in the election held on May 28, 1980 as void and further declaring that the appellant R. Palanimuthu has been duly elected from that constituency. After hearing the learned counsel for the parties we allowed the appeal on December 17, 1983 to the extent of setting aside the election of the second respondent for reasons to follow and directed the parties to bear the respective costs. Now we proceed to give our reasons.

2. The polling took place on May 28, 1980 and the result was announced after the counting was over on June 1, 1980. The second respondent belonging to the AIADMK secured 43,263 votes while the appellant belonging to the Congress (I) party, his closest rival, secured 40,997 votes. The other candidates in the field, respondents 3 to 5 secured less than 1752 votes each and the second respondent was declared elected.

3. The constituency has been declared by the notification dated February 26, 1969 issued by the Election Commission of India under the provisions of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act 108 of 1976 to be Scheduled Tribes constituency. Consequently, only candidates belonging to the Scheduled Tribes as per the Constitution and the Scheduled Castes and Scheduled Tribes Order, 1950 as amended in 1976 could contest for election from this constituency having regard to Article 173 of the Constitution and Section 5 of the Representation of the People Act, 1951, hereinafter referred to as the 'Act'.

4. The nominations of all the twelve candidates who filed their nominations before the last date fixed for the purpose were accepted by the first respondent, Returning Officer as valid. Later, seven of those candidates withdrew leaving only the appellant and respondents 2 to 5 in the field.

5. By the Scheduled Castes and Scheduled Tribes Order, 1950, Konda Reddies in Tamil Nadu except Kanyakumari district and Shencottah taluk in Triunelveli district have been declared as belonging to the Scheduled Tribes. Later, by the Scheduled Castes and the Scheduled Tribes (Amendment) Act 108 of 1976 the exception made in respect of Kanyakumari district and

Shencottah taluk in Triunelveli district has been removed with the result that Konda Reddies are thereafter shown to be existing throughout Tamil Nadu.

6. Only Scheduled Tribes candidates could contest from the constituency concerned in view of the provisions referred to above. The appellant's contention is that the second respondent does not belong to the Konda Reddy Scheduled Tribe community as claimed by him but is a Hindu Reddy and was therefore not qualified to be chosen to contest from the reserved constituency and consequently his election is void under Section 100(1)(c) of the Act. The second respondent opposed the election petition contending that he belongs to the Konda Reddy Scheduled Tribe community and was therefore entitled to contest from the constituency and his election is valid. The appellant filed objection to the acceptance of the second respondent's nomination at the time of scrutiny of nominations by the first respondent. Returning Officer, contending that the second respondent does not belong to the Konda Reddy community and was not a Scheduled Tribe candidate. This objection was admittedly rejected by the first respondent who appears to have relied upon the Tahsildar's certificate. The appellant's contention is that the first respondent rejected his objection to the acceptance of the nomination of the second respondent relying upon the certificate obtained by the second respondent from the Tahsildar to the effect that he belongs to the Konda Reddy Scheduled Tribe community without holding a proper enquiry and applying his own mind to the principles of law and the material placed before him.

7. On the pleadings the learned Single Judge who tried the election petition framed the following four material issues :

1. Is the second respondent a person not belonging to the Konda Reddy (Scheduled Tribe) community ?
2. Was the acceptance of the nomination of the second respondent improper ?
3. Is the election of the second respondent liable to be declared void under Sections 100(1)(c), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of the People Act, 1951 ?
4. Is the petitioner entitled to a further declaration under Section 101 of the Act ?

8. On consideration of the oral and documentary evidence adduced before him by the parties as also the evidence of three other persons examined as CWs 1 to 3, the learned Single Judge held that the second respondent belongs to the Konda Reddy Scheduled Tribe community and he upheld the second respondent's election and dismissed the election petition with costs as mentioned above. In coming to the conclusion that the second respondent belongs to the Konda Reddy Scheduled Tribe community the learned Single Judge found that the evidence of the second respondent RW 1 and of his father RW 9 that the second respondent belongs to the Konda Reddy community is corroborated by the evidence of not only RWs 2, 3, 4 and 6 but also by the evidence of RW 5 who belongs to the Naidu community and knows the members of the second respondent's family and by the evidence of RW 7 who belongs to the Oorali community. The learned Judge has made the following general observation regarding the witnesses examined on the second respondent's side :

Generally I find that all the witnesses who came to depose on behalf of the second respondent were elderly persons and have impressed me very much as telling the truth. They are also independent witnesses and expected to know the community of

the second respondent in view of their residence in the village and their long acquaintance. The veracity of their statements had not been shaken (in) the least in the cross-examination. I have no hesitation in accepting the evidence of these witnesses when they state that the second respondent belongs to Konda Reddy community which is a Scheduled Tribe.

9. Before us it was not disputed that the constituency concerned has been reserved by law for Scheduled Tribes candidates and therefore only Scheduled Tribes candidates could contest for election from that constituency. It was also not disputed that the appellant and respondents 2 to 5 contested as Scheduled Tribes candidates and that the appellant belongs to the Scheduled Tribe community and the election of the second respondent would be void under Section 100(1)(c) of the Act and the appeal would have to be allowed if the second respondent does not belong to the Konda Reddy Scheduled Tribe community. The only dispute before us is on the question whether the second respondent belongs to the Konda Reddy Scheduled Tribe community. The appellant's stand on this point is that the second respondent does not belong to the Konda Reddy community and is not a Scheduled Tribe candidate entitled to compete for election from the constituency concerned but is a Hindu Reddy, while the stand of the second respondent is that he is a Konda Reddy and belongs to the Scheduled Tribe community and was therefore entitled to compete for election from the constituency and has been validly elected. There is no dispute that Konda Reddy community is a Scheduled Tribe community. Arguments were advanced by Mr P. Chidambaram, learned counsel who appeared for the appellant and Mr S. N. Kacker, learned senior counsel who appeared for the second respondent on this only question. The first respondent's counsel Mr A. V. Rangam did not advance any argument.

10. It is seen from the evidence of PW 12, the then Chief Electoral Officer, Tamil Nadu that the constituency concerned was a non-reserved or general constituency up to February, 1979 and that it was converted into a Scheduled Tribes reserved constituency by the notification Ex. P-76, dated February 26, 1979 issued by the Election Commission of India under the provisions of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 which came into force on September 19, 1976. The appellant and respondents 2 to 5 contested in the election held in the constituency concerned on May 28, 1980 as Scheduled Tribes candidates. The second respondent RW 1 had obtained the certificate Ex. R-1 dated October 25, 1977 from the Tahsildar, Thuraiyur soon after the inclusion of Konda Reddy community in the list of Scheduled Tribes by the said amendment of the Scheduled Castes and Scheduled Tribes (Order) Act, 1976. The parties relied upon oral and documentary evidence before the learned Single Judge of the High Court for proving their respective contentions. But before us much reliance was not placed on oral evidence and our attention was invited to certain relevant documents. The oral evidence adduced on the said of the appellant is to the effect that the second respondent belongs to the Hindu Reddiar community which is not included in the Scheduled Tribes while the oral evidence adduced on the side of the second respondent is to the effect that he belongs to the Konda Reddy community which is a Scheduled Tribe community.

11. Mr Chidambaram invited our attention to four sets of documents. Exhibits P-26, P-27, P-28, P-29, P-30, P-31 and P-32 are documents relating to the second respondent's family and constitute one set. Exhibits R-2, R-3, P-23, P-24, and P-63 constitute the second set. Exhibits P-7, P-12, P-32, and P-58 constitute the third set. Exhibits P-9(a), P-10(d) and P-59 constitute the fourth set. We shall consider these documents separately.

12. Ex. R-9 is the sale deed dated March 4, 1899 executed by Veera Reddy in favour of Chellammal,

wife of the second respondent's grandfather Perumal Reddy. Ex. P-26 dated October 8, 1926 is the mortgage deed executed by the second respondent's father Venkata Reddy and his parents Perumal Reddy and Chellammal in favour of one Narayana Reddy. Ex. P-27 is an Order of 1965 sanctioning an agricultural loan of Rs 2000 to the second respondent's father Venkata Reddy. Ex. P-28 dated October 7, 1970 is the sale deed executed by the second respondent's father Venkata Reddy in favour of Periasamy and another. Ex. P-29 is an Execution Register extract showing that Chellammal, wife of Venkata Reddy is the decree holder-auction purchaser in E.P. No. 270 of 1971 of O.S. No. 1658 of 1970 on the file of the Additional District Munsiff's Court, Thuraiyur. Ex. P-30 dated July 9, 1973 is the sale deed executed by Chellammal, wife of Venkata Reddy in favour of one Veerasamy and others. Ex. P-31 dated September 13, 1976 is the sale deed executed in favour of the second respondent described as the son of Venkata Reddy by one Ramasamy Reddy and others. In all these documents the second respondent's family's community is mentioned as Hindu Reddy community.

13. Ex. R-2 dated April 25, 1958 is the first page of the Secondary School Leaving Certificate relating to the second respondent who is stated therein to be a Hindu Reddiar by caste. Ex. R-3 is the Secondary School Leaving Certificate of the second respondent's sister Leelavathi born on December 15, 1948. The second respondent's father has verified all the entries in columns 1 to 6 of Ex. R-3 to be correct and has undertaken not to demand any change in those entries in future. Against column 2(iii) relating to Leelavathi's community, as to whether she belongs to Scheduled Caste or Scheduled Tribe or Most Backward Class or is a convert to Christianity from any Scheduled Caste the second respondent's father has answered that query saying that she does not belong to any of those castes by an emphatic 'No'. RW 1 has admitted that Ex. R-3 relates to his sister Leelavathi and contains his father's signature. He has, however, stated that his father is illiterate and has put his signature in the original Ex. R-3 without knowing what it contains. Ex. P-23 is an extract from the birth register relating to a male child Veerama Reddy son of Venkata Reddy and Chellammal born on December 29, 1937. Ex. P-24 is another birth register extract relating to the birth of a male child Perumal, evidently the second respondent, on June 6, 1943 to the parents Venkata Reddy and Chellammal. Ex. P-63 is another birth register extract relating to the birth of a female child born of September 1, 1949. Venkata Reddy himself had informed the authority concerned about the birth on the next day and has signed the entry in taken thereof. In all these documents also the second respondent and his father are mentioned as belonging to the Hindu Reddiar community.

14. Ex. P-7 dated June 11, 1963 is the second respondent's application for admission into a Cooperative Training Institute. Ex. P-12 dated June 12, 1972 is the second respondent's application for admission of his daughter Geetha in a Panchayat Union Elementary School. Ex. P-32 is the certified copy of the plaint in Small Cause Suit No. 169 of 1980 instituted by the second respondent in the District Munsiff's Court, Thuraiyur. The second respondent has asserted in his evidence that he signed that plaint prepared by the Advocate's clerk without going through its contents. Ex. P-58 is the entry in the service register relating to the second respondent under his signature dated July 5, 1967. In all these documents also the second respondent is described as Hindu Reddiar.

15. The above documents show that the second respondent and his father Venkata Reddy and grandfather Perumal Reddy belong to the Hindu Reddiar community. The appellant gave notice under Order 12 Rule 5 of the Code of Civil Procedure to the second respondent for admitting certain facts. One of the facts he was required to admit is that Hindu Reddiar community is not a Scheduled Tribe community. The second respondent had admitted that the Hindu Reddiar community is not a Scheduled Tribe community and stated that he had obtained the certificate dated October 25, 1977

from Tahsildar of Thuraiyur taluk to the effect that he belongs to the Konda Reddy community, and that he had applied on an earlier date for the grant of that certificate in order to enable him to apply for a job. Faced with the aforesaid documents which clearly show that the second respondent and the members of his family belong to the Hindu Reddiar community which is admittedly not a Scheduled Tribe community the second respondent has sought to get over the difficulty by saying that Konda Reddy community is a sub-caste of the Hindu Reddiar community. This explanation cannot be accepted having regard to the facts and circumstances of the case.

16. The last set of documents have been produced to show that the second respondent had not claimed to belong to the Konda Reddy Scheduled Tribe community though he would have done so if he belongs to that community in fact but has merely stated that he is the son of Venkata Reddy. Ex. P-9(a) dated March 12, 1968 is the second respondent's application for appointment as Supervisor in a Land Mortgage Bank where he has described himself as the son of Venkata Reddy. Ex. P-10(d) dated March 26, 1978 is the second respondent's application for appointment as a trustee in Sri Prasanna Venkatachalapathy temple and other temples at Thuraiyur where also he has described himself as the son of Venkata Reddy. Ex. P-59 dated January 8, 1965 is the second respondent's application for appointment as a Junior Assistant in the Thuraiyur Rural Cooperative Bank where he has described himself as the son of Venkata Reddy. Ex. P-10(d) may not serve the purpose for which this set of documents has been produced in the absence of any material on record to show that the second respondent would have stood to benefit in the matter of appointment as a trustee of the temples if he had mentioned that he belongs to the Konda Reddy Scheduled Tribe community. It is common knowledge that in Tamil Nadu reservation for certain percentage of appointments in Government and quasi-Government services is based on the community to which applicants belong. The reservation of certain percentage of the appointments to Backward Classes on the one hand and Scheduled Castes and Scheduled Tribes together on the other has been made depending upon the relative population of those communities in that State. Scholarships and hostel accommodation are available in that State to the Backward Classes and Scheduled Caste and Scheduled Tribes students subject to eligibility. These facts are well known in Tamil Nadu. It is not probable that the second respondent who had applied in 1965 and 1968 for appointment as a Junior Assistant in Thuraiyur Rural Cooperative Bank and as Supervisor in a Land Mortgage Bank was not aware that it would be advantageous for him to mention in those applications that he belonged to the Konda Reddy Scheduled Tribe community if in fact he had belonged to that community. We think that he would not have failed to mention in those applications that he belongs to the Konda Reddy Scheduled Tribe community if in fact he had belonged to that community. While the first three of the four sets of documents mentioned above probabilise the fact that the second respondent belongs to the Hindu Reddiar community which admittedly is not a Scheduled Tribe community, Exs. P-9(a) and P-59 in the last set of documents improbabilise the second respondent's case that he belongs to the Konda Reddy Scheduled Tribe community. Ex. R-3 which is one of the documents in the first set is a very important document which conclusively establishes that the second respondent does not belong to the Konda Reddy Scheduled Tribe community, for in that document which had been verified by the second respondent's father to be true under his signature with an undertaking that he would not demand any change in any of the entries in columns 1 to 6 the second respondent's father has stated that his daughter Leelavathi to whom Ex. R-3 relates does not belong to the Scheduled Tribe or Scheduled Caste or Most Backward Class and was not a convert to Christianity from any Scheduled Caste. The second respondent's father RW 9 has conveniently stated in his evidence that he does not know to read or write Tamil, Telugu or any other language, that he used to previously sign in Tamil and that he has lost his eyesight and could not see whether Exs. R-2 and R-3 contain his signature. It is not possible to accept the evidence of RW 1 who has admitted that Ex. R-3 relates

to his sister Leelavathi and contains his father's signature, as mentioned above, that his father RW 9 is illiterate and he had signed Ex. R-3 without knowing what it contained. RW 9 appears to be ignorant of the existence of the community known as Konda Reddy community, for he has stated in his evidence that there is no community known as Konda Reddy community though earlier he had stated in his evidence that he belongs to the Konda Reddy community. RW 1 has stated in his evidence that he came to know that he belongs to the Konda Reddy community only from the information given to him by his father RW 9. It is not the case of the second respondent that his father RW 9 himself came to know that he belongs to Konda Reddy community only after the date on which he put his signature in the aforesaid important document Ex. R-3 in which he has clearly admitted that his daughter Leelavathi does not belong to any Scheduled Tribe. Therefore, RW 9 who has clearly admitted in Ex. R-3 that his daughter Leelavathi does not belong to the Scheduled Tribe community could not have informed the second respondent that they belonged to the Konda Reddy community. On the evidence available on record in this case it is absolutely impossible for any court to reasonably conclude that the second respondent belongs to the Konda Reddy Scheduled Tribe community and not to the Hindu Reddiar community. We may state here that Mr S. N. Kacker found it almost impossible to support the judgment of the learned Single Judge that the second respondent belongs to the Konda Reddy Scheduled Tribe community and that his nomination and subsequent election as a Member of the Tamil Nadu Legislative Assembly from the Scheduled Tribes reserved constituency concerned are valid. For these reasons we hold that the second respondent does not belong to the Konda Reddy Scheduled Tribe community but belongs to the Hindu Reddiar community which is not a Scheduled Tribe community and that his election from the Scheduled Tribes reserved constituency concerned is void under Section 100(1)(c) of the Act. We therefore allow the appeal and set aside the second respondent's election with costs as stated above.

17. Before I part with this appeal I would like to say what we feel that the Government of Tamil Nadu should notice for taking such remedial action as it may deem necessary. Scholarships are awarded, hostel accommodation and facilities are made available and reservation of seats in professional and other colleges and institutions of higher learning and for appointment to posts in Government and quasi-Government services have been made in Tamil Nadu for the Backward Classes forming one group and Scheduled Castes and Scheduled Tribes forming another group on the ratio of their population with the laudable object of helping their educational, economic and social advancement. The second respondent who has now been found to be a Hindu Reddiar and not a Scheduled Tribe Konda Reddy, has admittedly obtained the Tahsildar's certificate dated October 25, 1977 to the effect that he belongs to the Scheduled Tribe Konda Reddy community admittedly with the object of securing a job as a Scheduled Tribe candidate. If he had succeeded in getting any job in Government service or quasi-Government service on the basis of that certificate it is needless to say that he would have deprived some real Scheduled Caste or Scheduled Tribe candidate getting the job on the basis of the aforesaid reservation. The second respondent has used that certificate for obtaining nomination and election in a Scheduled Tribes constituency of the Tamil Nadu Legislative Assembly even though he ought to have known that other candidates in the keenly contested election might raise objection to his false or wrong claim that he is a Scheduled Tribe candidate. The wrong claim which escaped the scrutiny of even the High Court had to be negatived only by this Court after the appellant had taken a lot of pains and incurred considerable expenditure in filing the present appeal. This amount of scrutiny and contest could not be expected from students and candidates for appointments who belong to Backward Classes, Scheduled Castes and Scheduled Tribes. If attempts are made by persons not belonging to any of these communities at securing the special benefits to which these Backward Classes, Scheduled Castes and Scheduled Tribes students and candidates are entitled under the rules in force in that State, and there is no proper scrutiny of

the claim of such persons that they belong to these classes the benefits which are intended by the State to go to these classes will be taken away by those to whom they are not really intended. Therefore, so long as these benefits are continued for the aforesaid classes strict scrutiny has to be made by the State Government machinery and the fraud which may be committed on the State and those classes of people for whom these benefits are really intended by those for whom those benefits are not meant by producing false community certificates has to be stopped by the Government taking appropriate steps. At the same time it must be ensured that it is not made difficult for persons really belonging to these classes obtaining the necessary community certificates from those authorised to issue the same. A copy of the judgment shall be forwarded to the Chief Secretary to the Government of Tamil Nadu.

FAZAL ALI AND RANGANATH MISRA, JJ. (partly dissenting) ❖

We entirely agree with the reasons given by brother Varadarajan, J. for allowing the appeal. However, we refrain from expressing any opinion on the observations made by our learned Brother in the last paragraph of the judgment, beginning with the words "Before I part with" and ending with "authorised to issue the same".

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