

Soosai

Vs

Union of India and Others

Movement for Protection of Human Rights of Marginalis Communities Through Its Secretary

Vs

Union of India and Others

Writ Petition No. 9596 of 1983 and Writ Petition No. 1017 of 1984

(CJI P. N. Bhagawati, R. S. Pathak, A. N. Sen JJ)

30.09.1985.

JUDGMENT

PATHAK, J. -

1. This and the connected writ petitions raise the important question whether the Constitution (Scheduled Castes) Order, 1950 is constitutionally invalid on the ground that only Hindu or Sikh members of the castes enumerated in the Schedule to that Order are deemed to be Scheduled Castes for the purposes of the Constitution of India.
2. The petitioner Soosai (in Writ Petition 9596 of 1983) states that he belongs to the Adi-Dravida community and is a convert to Christianity. He is a cobbler by profession and works on the roadside at one of the crossroads in Madras. In May 1982, the officers of the Tamil Nadu Khadi and Village Industries Board surveyed the sites on which cobblers were working, including the place occupied by the petitioner, and subsequently on July 27, 1982 several cobblers were allotted bunks free of costs by the Regional Deputy Director, Khadi and Village Industries Board. The petitioner was not. On enquiry the petitioner came to know that the allotment of bunks free of cost was consequent to a proposal under the Special Central Assistance Scheme of the Government of India for the welfare of Scheduled Castes. The funds for the purpose were provided from the Special Central Assistance of the Government of India set up for giving effect to schemes exclusively intended for Scheduled Castes under G. O. Ms. No. 580 Social Welfare Department dated February 13, 1982. It is pointed out that this Order specifically states that persons belonging to the Scheduled Castes and converted to Christianity are not eligible for assistance under the scheme. The petitioner points out that the said Order has been made in consonance with the Constitution (Scheduled Castes) Order, 1950, which specifically declares that 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 petitioner assails the validity of that Order on the ground that it violates Articles 14, 15 and 25 of the Constitution.
3. The essence of the petitioner's case is that he was a Hindu belonging to the Adi-Dravida caste and on conversion to Christianity he continues as a member of that caste. The Adi-Dravida caste is one of the castes enumerated in the Schedule to the Constitution (Scheduled Castes) Order, 1950. The petitioner alleges that he has been denied the benefit of welfare assistance intended for Scheduled

Castes on the ground only that he professes the Christian religion, and he contends that inasmuch as such discrimination has been effected pursuant to the provision contained in paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, that provision is constitutionally invalid. The petitioner invokes Article 14, which is the central provision in the Constitution guaranteeing the right to equality before the law and the equal protection of the laws, and clause (1) of Article 15 which prohibits the State from discriminating against any citizen on the ground only, among others, of religion. It is pointed out that when clause (4) of Article 15 permits the State, notwithstanding the prohibition contained in clause (1) of Article 15, to make special provision for the advancement of socially and educationally backward classes of citizens and for the Scheduled Castes and Scheduled Tribes, it envisages such special provision for the advancement of all members of such backward classes of citizens, Scheduled Castes and Scheduled Tribes. If any discrimination is exercised between the members of a Scheduled Caste on the ground of religion only so as to promote the welfare of one group of members and deny it to the others the denial will be invalid. Reference has also been made to Article 25 on the ground that a Christian convert will be tempted to reconvert to Hinduism or Sikhism in order to benefit from the constitutional provisions relating to Scheduled Castes and therefore paragraph 3 in its operation denies him freedom of conscience and the right freely to profess, practise and propagate his religion.

4. The framers of the Constitution have taken great care to ensure that sufficient provision is made for ameliorating the conditions of certain backward classes found in India who suffer from social and economic disabilities. Article 46 enjoins upon the State, as a Directive Principle of State Policy, to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. In consonance with this objective they enacted a number of provisions in the Constitution, of which clause (4) of Article 15 is one. Besides, although clause (1) of Article 16 guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State, there is clause (4) of Article 16 which lays down that nothing in Article 16 will prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 17 abolishes 'Untouchability' and forbids its practice in any form, and declares that the enforcement of any disability arising out of 'Untouchability' will be an offence punishable in accordance with law. There are other provisions, such as Article 330 which provides for the reservation of seats in the House of the People for Scheduled Castes and Scheduled Tribes and Article 332 which makes similar provision for the reservation of seats for them in the State Legislative Assemblies. We are concerned here with the advantages and benefits envisaged by the Constitution in respect of members of the Scheduled Castes.

5. The expression "Scheduled Castes" is defined in Clause 24 of Article 366 to mean "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". Clause (1) of Article 341 enjoins upon the President to specify by public notification the castes, races or tribes or parts of or groups within castes, races or tribes, which for the purposes of the Constitution are deemed to be Scheduled Castes in relation to a State or Union Territory. Once such notification is issued by the President it cannot be varied by any subsequent notification except that, by virtue of clause (2) of Article 341, Parliament may by law include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe. In discharge of the obligation imposed by clause (1) of Article 341 the President issued the

Constitution (Scheduled Castes) Order, 1950. In its original form, paragraph 3 declared that ". . . no person who professes a religion different from Hinduism" would be deemed to be a member of a Scheduled Caste. There was a proviso to paragraph 3 which declared that every member of the Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste resident in Punjab or the Patiala and East Punjab States Union would in relation to that State be deemed to be a member of the Scheduled Castes whether he professed the Hindu religion or the Sikh religion. Subsequently, Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 which substituted for the original paragraph 3 the present paragraph, which declares :

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.

It is apparent that for the purposes of the Constitution the constitutional provisions relating to Scheduled Castes are intended to be applied to only those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who profess the Hindu or the Sikh religion. Clearly, if it can be contemplated that a Christian belongs to one of those castes, he is barred by reason of paragraph 3, from being regarded as a member of a Scheduled Castes and is, therefore, not entitled to the benefit of the constitutional provisions relating to Scheduled Castes.

6. The main question debated before us is whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity. Cases decided by this Court and by the High Courts bearing on the point have been cited on both sides of the line, and our attention has been invited to textbooks, commentaries and Commission Reports, some of which contain the observation that depressed groups and castes are to be found not only among Hindus and Sikhs but also among Muslims and Christians. It appears to us unnecessary in this case to enter upon that question and to decide whether a Hindu belonging to the Adi-Dravida caste continues to be a member of that caste on his conversion to the Christian religion. We shall assume, for the purposes of this case, that the caste is retained on conversion from one religion to the other. The real question is whether on the material before us it can be said that in confining the declaration to members of the Hindu and the Sikh religions, paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against members of the Christian religion.

7. Now it cannot be disputed that the caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystallised into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilised society, and were indeed not even 'touchable'. This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness. And though most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny, and despite the efforts of several noted social reformers, specially during the last two centuries, there has been a crying need for the emancipation of the depressed classes from the degrading condition of their social and economic servitude. Dr. J. H. Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution

(Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. During the framing of the Constitution, the Constituent Assembly recognised "that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability", and that "this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise". The Sikhs however, demanded that some of their backward sections, the Mazhabis, Ramdasias, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these sects were originally Scheduled Castes Hindus who had only recently been converted to the Sikh faith and "had the same disabilities as the Hindu Scheduled Castes". The depressed classes within the fold of Hindu society and the four classes of the Sikh community were therefore made the subject of the original Constitution (Scheduled Castes) Order, 1950. Subsequently in 1956 the Constitution (Scheduled Castes) Order, 1950 was amended and it was broadened to include all Sikh untouchables.

8. It is quite evident that the president had before him all this material indicating that the depressed classes of the Hindu and the Sikh communities suffered from economic and social disabilities and cultural and educational backwardness so gross in character and degree that the members of those castes in the two communities called for the protection of the constitutional provisions relating to the Scheduled Castes. It was evident that in order to provide for their amelioration and advancement it was necessary to conceive of intervention by the State through its legislative and executive powers. It must be remembered that the declaration incorporated in paragraph 3 deeming them to be members of the Scheduled Castes was a declaration made for the purposes of the Constitution. It was a declaration enjoined by clause (1) of Article 341 of the Constitution. To establish that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin - Hinduism - continue in their oppressive severity in the new environment of a different religious community. References have been made in the material before us in the most cursory manner to the character and incidents of the castes within the Christian fold, but no authoritative and detailed study dealing with the present conditions of Christian society have been placed on the record in this case. It is, therefore, not possible to say that the President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950. It is now well established that when a violation of Article 14 or any of its related provisions is alleged, the burden rests on the petitioner to establish by clear and cogent evidence that the State has been guilty of arbitrary discrimination. Having regard to the State of the record before us, we are unable to hold that the petitioner has established his case. The challenge must, therefore, fail.

9. In the connected Writ Petition 1017 of 1984 the submission have proceeded substantially on the same grounds, and relief has been sought additionally against a Circular Letter No. 21711/ADWII/80-26 dated August 16/25, 1983 issued by the Government of Tamil Nadu to the Tamil Nadu Public Service Commission stating that "Scheduled Caste" Christians who revert to

Hinduism and on that basis obtain appointments to reserved seats in Government service are liable to have their selection cancelled. On the considerations which have prevailed with us in dismissing the earlier writ petition, this writ petition must also be dismissed.

10. The writ petitions are dismissed but without any order as to costs.

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