

S. Swvigaradoss

Vs

Zonal Manager, F.C.I.

Spl. Leave Petn. (Civil) No. 27571 of 1995

(K. Ramaswamy, G. B. Pattanaik JJ)

25.01.1996

ORDER

1. The petitioner's parents initially belonged to Adi-Dravida by caste hailing from Kattalai village in Tirunelveli District, Tamil Nadu. Admittedly, before his birth, they had converted into Christian religion. He was born on May 7, 1941. He joined the service of the Food Corporation of India on March 7, 1968 as Assistant Grade-I. Subsequently, he had married on February 14, 1969 according to Christian rites in a Church. On these facts, notice was given to the petitioner to show cause how the petitioner would be entitled to benefits and privileges extended to the Scheduled caste candidates in future. Challenging it, he filed a suit. His case is that he was baptised when he was a minor. After he became major, he is continuing as a Adi-Dravida. The trial Court though decreed the suit, on appeal it was reversed and in S. A. No. 270/84, the High Court confirmed the same. Thus this Special Leave Petition.

2. It is contended for the petitioner that though he was born of Christian parents, but with their consent, he got converted to Hindu at the age of 14 and on such conversion, he became Adi-Dravida and consequently entitled to the status of Scheduled Caste. Therefore, he is entitled to the status as a Scheduled Caste, Article 366 (24) of the Constitution of India defined Scheduled Caste as under :

"Art. 366 (24) Scheduled Caste means such castes, races or tribes or parts of or group within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution."

3. Article 341 (1) empowers the President of India to specify, in consultation with the Governor of the State, with respect to the State or Union Territory, or for a part of the State, District or region by public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be 'Scheduled Castes' in relation to the State or Union Territory as the case may be. Sub-Article (2) empowers the parliament by law to 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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. In other words, the Constitutional mandate is that it is the President who is empowered, in consultation with the Governor of the State, to specify by a public notification the caste, race or tribe or parts or groups within caste, race or tribe or parts or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory.

4. In *B. Basavalingappa v. D. Munichinnappa* [(1965) 1 SCR 316 : (AIR 1965 SC 1269)] the Constitution (Scheduled Castes) Order, 1950 specified Bhovi caste as a Scheduled Caste. The respondent, a Voddar by caste contested election as a Scheduled Caste Bhovi. A Constitution Bench examined the scheme of Article 341 and upheld the contention of the appellant that in view of the stringent provisions of the Constitution with respect to a notification issued under clause (1), it is not open to anyone to include any caste as coming within the notification on the basis of evidence - oral or documentary - if the caste in question does not find specific mention in the terms of the notification, it was not open, therefore, to give evidence that a particular caste was a Scheduled Caste not mentioned in the 1950 Order.

5. In *Bhaiyalal v. Harikishan Singh* (1965) 2 SCR 877 : (AIR 1965 SC 1557), wherein the same question had arisen, another Constitution Bench had held that in specifying castes, races or tribes under Article 341 (1) of the Constitution, the President has been expressly authorised to limit the notification to parts of or groups within the caste, race or tribe to be Scheduled Caste by including them in the Order. That would be applicable in relation to the entire State or in relation to parts of the State where the President is satisfied that on examination of the social and educational backwardness of the race, caste or tribe justifies such specification.

6. In *Srish Kumar Choudury v. State of Tripura* (1990 Supp SCC 220) : (AIR 1990 SC 991) a three-Judge Bench was called upon to consider whether Laskar community in State of Tripura is a Scheduled Tribe. After examining the scheme of the Constitution it was held that though evidence may be admissible to verify the entries in the Presidential Order to find a caste/tribe included in a particular tribe or caste, tribal communities, the admissibility of the evidence is confined within the limitations enacted in the order. It was not open to the Court to make any addition or subtraction from the Presidential Order.

7. In *Kumari Madhuri Patel v. Addl. Commissioner, Tribal Development* (1994) 6 SCC 241 : (1994 AIR SCW 4116), a two-Judge Bench further considered whether Kolis, a Backward Class in Maharashtra would be declared as Mahadeo Koli, a Scheduled Tribe in Maharashtra. It was held that after the amendment under Scheduled Castes and Scheduled Tribes Order (Amendment Act), 1976, no subtraction or addition to it by way of declaration of castes, tribes or sub-caste, parts of or groups of tribes or tribal community is permissible. and that the Presidential notification, subject to the amendment by Parliament, is conclusive.

8. The Courts, therefore, have no power except President. It is settled law that the Court would look into the public notification under Section 341 (1) or 342 (1) for a limited purpose. The notification issued by the President and the Act of the Parliament under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the Schedules appended thereto can be looked into for the purpose to find whether the castes, races or tribes are parts of or groups within castes, races or tribes shall be Scheduled Castes for the purposes of the Constitution. Under the Amendment Act, 1976, again the Parliament has included or excluded from schedules appended to the Constitution which are now conclusive. Schedule I relates to Scheduled Castes and Schedule II relates to Scheduled Tribes. Christian is not a Scheduled Caste under the notification issued by the President. In view of the admitted position that the petitioner was born of Christian parents and his parents also were converted prior to his birth and no longer remained to be Adi Dravida, a Scheduled Caste for the purpose of Tirunelveli District in Tamil Nadu as notified by the President, petitioner cannot claim to be a Scheduled Caste. In the light of the constitutional scheme civil Court has no jurisdiction under Section 9 of CPC to entertain the suit. The suit, therefore, is not maintainable. The High Court, therefore, was right in dismissing the suit as not maintainable and also not giving any

declaration sought for.

9. The SLP is accordingly dismissed. Petition dismissed.