SUPREME COURT OF INDIA

Kurapati Maria Das

Vs.

DR. Ambedkar Seva Samajan

C.A.No._2617_of 2009

(Tarun Chatterjee and V.S.Sirpurkar JJ)

17.04.2009

JUDGEMENT

V.S. SIRPURKAR, J.

1. Leave granted.

2. The order of the Division Bench of the High Court confirming the judgment of the learned Single Judge is in challenge before us. The learned Single Judge had allowed the writ petition filed on behalf of the respondent Nos. 1 to 10 challenging the election as well as the continuation of the appellant herein as the Chairperson of the Baptla Municipal Council.

3. The following facts will highlight the controversy:

The appellant herein contested the election from Ward No.8 of Bapatla as a Councilor in the election held on 24.09.2005. He was declared elected. Later on he was elected as the Chairperson of the Council by all the elected Councilors. The said Ward was reserved for Scheduled Castes and the office of the Chairperson of Bapatla Municipal Council was also reserved for the Scheduled Castes by a Notification dated 18.08.2005 issued by the Government of Andhra Pradesh. The appellant herein claimed that he belonged to the Scheduled Caste, namely, "Mala", which is one of the castes specified in the Constitution.

4. After about six months of the election of the appellant as the Chairperson, a representation came to be filed by the 1st respondent on 22.03.2006 to the Superintendent of Police, Guntur to investigate into the issue relating to appellant's community status. A further representation came to be made on 14.04.2006 for initiation of action against the appellant as he had got himself elected by making false claim of being a member of the Scheduled Caste. Similar representation was made to Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes. A complaint was made on 18.04.2006 before the District Collector, Guntur under Section 5 read with Section 12 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereinafter referred to as `the 1993 Act' for short). An application was also filed under the Right to Information Act, 2005 for supply of documents such as the application filed 3 by the appellant in the month of August, 2005 for issuing the caste certificate and the documents annexed to such application for substantiating his claim of belonging to the Scheduled Caste, the previous certificate, if any, issued to the appellant and the caste certificate issued to him pursuant to his application made in the month of August, 2005.

Ultimately, on 20.8.2006, a writ petition came to be filed before the Andhra Pradesh High Court purportedly for the writ of quo warranto. In the said writ petition, the following prayers were made:

"For the said reasons, it is prayed that this Hon'ble Court may be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Quo Warranto against the 9th respondent.

(a) directing the 9th respondent to disclose the authority under which he is holding the office of the Chairperson and the office of the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8).

(b) directing the 9th respondent to vacate the offices of the Chairperson and the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No.8), or, (c) removing the 9th respondent from the office of the Chairperson and from the office of the Councilor of the Bapatla Municipal Council, Guntur District (representing Ward No. 8) and (d) to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For the said reasons, it is prayed that this Hon'ble Court may be pleased to issue an interim injunction restraining the 9th respondent from functioning as the Chairperson and as the member of the Bapatla Municipal Council, 4 Guntur District representing Ward No.8 thereof pending disposal of the writ petition and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

5. In the said writ petition, one application being WPMP 23998/06 was also filed praying the Court to receive a copy of the report of the Inspector of Police dated 21.08.2006 giving the details of the representations made by the respondent No.1. Along with the writ petition, the 1st respondent had also filed copy of Service Rules of the present appellant maintained by In- charge of the Establishment of the office of Assistant Engineers operation Bapatla, Andhra Pradesh, State Electricity Board and seniority list of the Assistant Lineman prepared by the Southern Power Distribution Company of Andhra Pradesh Ltd. Operation Division, Tenali which was the successor of Andhra Pradesh State Electricity Board. It was pointed that in these documents the appellant was described as the Christian Mala belonging to the Backward Class `C' category. Even in the Affidavit, in support of the writ petition, it was averred that the 1st respondent Association and the other respondents had came to know that appellant belonged to the backward class `C' category as he was a Mala converted to Christianity and that he had obtained employment in the Andhra Pradesh State Electricity Board and continued in service till his retirement. In paragraph 11 of the affidavit in support of the petition, the petitioners had relied on the documents regarding the service record of the appellant.

6. The appellant denied all these claims and further claimed specifically that he had never converted to Christianity and did not belong to backward class `C' category. He asserted that he was born at Pedavadlapudi, a village at Mandal Mangalaguri in the District Guntur in the family of the caste Mala belonging to Hindu religion and his father is one Shri Sangeeta Rao and family of his parents and ancestors belonged to Hindu Mala community and he never followed Christianity and was never baptized to Christianity. He relied on the Caste Certificate issued by Mandal Revenue Officer in August, 2005 and other certificate issued by the Mandal Revenue Officer in the year 2004 showing that he belonged to Hindu Mala category.

In short, he categorically disputed the claim of the writ petitioners (respondents herein) that he was not a Hindu Mala Scheduled Caste but was a Christian.

7. He also pointed out that firstly his nomination and his election as a Ward member which he had contested as a Scheduled Caste candidate, was never challenged by way of an Election Petition though there is a specific remedy provided in the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967. He also pointed out that the caste certificates issued by the authorities in the year 2004-05 were still intact and not cancelled. He also pointed out that this was nothing but an indirect way of challenging his election as a Councilor and, thereafter, as the Chairperson by way of a writ petition without filing any Election Petition which was specifically barred under Article 243 ZG of the Constitution of 6 India. He, therefore, averred that the petitioners before the High Court who are respondents herein had bypassed the specific remedy provided under the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967, challenging the election by way of an Election Petition and have resorted to the filing of writ petition raising the disputed questions of fact and, thus, the writ petition was not maintainable.

8. The learned Single Judge of the High Court took note of the efforts made by the respondents by their representations to the various authorities as also their complaint made under Section 5 of the 1993 Act. The learned Single Judge after noting the rival contentions, extensively quoted and relied on the documents filed by the writ petitioners (respondent herein) relating to the service record of the appellant as also the representations filed by the writ petitioners. The Learned Single Judge held that the authenticity of the service record and the entries produced before the High Court could not be doubted in view of the stand taken by the appellant in his counter affidavit. He held that the said stand against these documents was unsatisfactory. He therefore, came to the following factual findings in paragraph 23 of his judgment:

"23. On a careful analysis of the whole material available on record, the following aspects emerged:- (1) The fact that the 9th respondent worked in A.P. Electricity Board is not in serious dispute. The fact that he retired from service also is not in serious dispute. The Service Book, the Entries, authenticity thereof also cannot be in serious dispute, especially in the light of the nature of the stand taken by the 9th respondent in the counter affidavit.

(2) The Caste Certificates were obtained by the 9th respondent after retirement claiming to be of the Scheduled Caste community;

(3) The stand taken by the 9th respondent is not one of re-conversion into Hinduism again but the stand is that he was never Baptized and the family continues to be a Hindu family only belonging to Scheduled Caste;

(4) It is pertinent to note that the petitioners had taken a specific stand that for about two generations the family of the 9th respondent had embraced Christianity and continues to have the Christian faith;

(5) The conduct of the 9th respondent in seeing that the document are not furnished as reflected from the orders also would go to show that the stand taken by him is not bona fide; and (6) In the light of the whole material available on record, this is a case of play of fraud on the Constitution depriving the Scheduled Caste category persons from being elected to the respective offices though the said respective offices are reserved for the said category.

In the light of the above facts, this court is of the considered opinion that this is a fit case where the 9th respondent cannot be permitted any longer to occupy the respective offices claiming benefits under the category of Scheduled Caste, taking shelter under the false Scheduled Caste Certificate

obtained by him for the purpose of election or otherwise after retirement. On a careful analysis of the whole episode, this is only irresistible conclusion at which this Court can arrive at, since no other conclusion is possible to be drawn."

9. Ultimately, on this basis he came to the conclusion that the writ petition was not only maintainable but was also liable to be allowed. In that manner he allowed the writ petition.

10. An appeal came to be filed against this judgment before the Division Bench. However, the Division Bench dismissed the said appeal. That is how the appellant is before us.

11. It is urged by Shri N. Nageshwar Rao, learned Senior Counsel appearing on behalf of the appellant that the High Court has erred in exercise of its jurisdiction under Article 226 of the Constitution, in view of a clear bar in the Constitution under Article 243 ZG (b). He further claims that firstly no objection was raised to the nomination papers of the appellant herein when he contested the election as a Scheduled Caste candidate from Ward No.8 of Baptla Municipal Council which was reserved for the Scheduled Caste Candidates. He further pointed out that the election of the appellant from that Ward and the subsequent election as Chairperson could have been challenged by Election Petition but even that was not done. He pointed out that there is a specific provision under Section 5 of the 1993 Act for the determination of the validity of the caste certificate issue. He pointed out that though such application was made, yet, without waiting for the proceedings to be completed under that Act, the writ petitioner rushed to the High Court which was not permissible.

12. The learned counsel argues that the necessary result is that the caste certificate of the appellant still remains intact and, therefore, it is a prima facie proof in support of the plea of the appellant that he belongs to the Scheduled Caste community. Lastly, learned counsel contends that the High Court has gone into the fact finding exercise which was not permissible and has come to the erroneous conclusion that the appellant had converted to the Christianity, which plea was never raised by the writ petitioner. Learned counsel further buttressed his arguments by saying that the service record of the petitioner was wholly irrelevant for the purpose of deciding as to the caste he belongs to. Learned counsel furthermore argued that under Article 226, the High Court could not have gone out of its way to invite the files of the Department and then come to the conclusion that the petitioner did not belong to the Scheduled Caste as he had become Christian. By way of his last contention, learned Senior Counsel urged that even if the appellant had converted to Christianity, that did not result in loosing the Scheduled Caste status on the part of the appellant. Shri R. Sundarvardhan, learned Senior Counsel arguing for the State Government also supports the argument of the appellant and contends that the High Court could not have gone into the disputed questions in a writ petition which itself was not tenable owing to the specific bar under Article 243 ZG (b).

13. As against this, Shri Gagan Gupta learned counsel appearing on behalf of the respondents herein argues that it would be a travesty to allow 10 the appellant to continue as a Councilor or, as the case may be, as the Chairperson of the Municipal Council, particularly, when that post was only meant for a person belonging to the Scheduled Caste and where it was proved that the appellant-petitioner did not belong to the Scheduled Caste.

Regarding the bar of jurisdiction under Article 243 ZG (b), learned counsel submitted that the decision relied upon by the High Court reported as K.

Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526], was applicable and, therefore, it could

not be said that there was a bar to the entertainment of the writ petition under Article 226. Learned counsel supported the factual findings recorded by the High Court to the effect that the appellant was a Christian and, therefore, could not claim the status of a person belonging to the Scheduled Caste, more particularly, caste "Mala".

14. In the first place, it would be better to consider as to whether the bar under Article 243 ZG (b) is an absolute bar. The Article reads as thus:

"243ZG (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

15. At least from the language of clause (b), it is clear that the bar is absolute. Normally, where such a bar is expressed in a negative language as is the case here, it has to be held that the tone of clause (b) is mandatory and the bar created therein is absolute. This Court in its recent decisions has held the bar to be absolute. First such decision is reported as Jaspal Singh Arora v. State of M.P. & Ors.[1998 (9) SCC 594]. In this 11 case the election of the petitioner as the President of the Municipal Council was challenged by a writ petition under Article 226, which was allowed setting aside the election of the petitioner. In paragraph 3 of this judgment, the Court observed:

"it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by Courts in electoral matters contained under Article 243 ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition.

Apart from the bar under Article 243 ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition....."

16. The second such decision is reported as Gurdeep Singh Dhillon v.

Satpal & Ors. 2006 (10) SCC 616]. In that decision, after quoting Article 243 ZG (b) the Court observed that the shortcut of filing the writ petition and invoking Constitutional jurisdiction of the High Court under Article 226/227 was not permissible and the only remedy available to challenge the election was by raising the election dispute under the local statute.

17. There is no dispute that Rule 1 of the Andhra Pradesh Municipalities (Decision on Election Disputes) Rules, 1967, specifically provides for challenging the election of Councillor or Chairman. It was tried to be feebly argued that this was a petition for quo warranto and not only for challenging the election of the appellant herein. This contention is clearly incorrect.

When we see the writ petition filed before the High Court, it clearly suggests that what is challenged is the election. In fact the prayer clauses 12 (b) and (c) are very clear to suggest that it is the election of the appellant which is in challenge. Even when we see the affidavit in support of the petition in paragraph 8, it specifically suggested that the Ward No. 8 was reserved for the persons belonging to the Scheduled Castes from where the appellant contested the election representing himself to be a person belonging to the Scheduled Caste. Paragraph 9 speaks about the election of the appellant as the Chairperson. Paragraph 30 also suggests that the complaint has been made against the appellant that he had usurped the public office by falsely claiming himself to be a person belonging to the Scheduled Caste. In paragraph 33, it is contended that the first petitioner had no remedy to question the election of the 9th respondent by way of an election petition. Therefore,

though apparently it is suggested in the writ petition was only for the writ of quo warranto, what is prayed for is the setting aside of the election of the appellant herein on the ground that he did not belong to the Scheduled Caste. It is further clear from the writ petition that the writ-petitioners were themselves aware of the situation that the writ of quo-warranto could have been prayed for only on invalidation or quashing of the election of the appellant, firstly as a Councillor and secondly, as a Chairman and that was possible only by an Election Petition. The two decisions quoted above, in our opinion, are sufficient to hold that a writ petition of the nature was not tenable though apparently the writ petition has been couched in a safe language and it has been represented as if it is for the purpose of a writ of quo warranto.

18. Learned counsel Shri Gupta, however, invited our attention to some other decisions of this Court reported as K. Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526] where a writ of quo warranto was sought against the member of the Legislative Assembly on the ground that his name was not found in the voters' list of that particular constituency from where he was elected. Our attention was invited to paragraphs 27 and 28. In paragraph 27 after referring to the decision of the Election Commission of India v. Saka Venkata Rao [AIR 1953 SC 210] and considering the Article 192, the Court observed that Article 226 is couched in widest possible language and unless there is a clear bar to the jurisdiction of the High Court, its powers under Article 226 can be exercised when there is any act which is against any provision of law or vioative of constitutional provisions and when the recourse cannot be had to the provisions of the Act for appropriate relief. Then the Court observed:

"In circumstances like the present one, bar Under Article 329 (b) will not come into play when the case falls under Articles 191 and 193 and the whole process of election is over.

Consider the case where a person elected is not a citizen of India. Would the court allow the foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?"

In paragraph 28, the Court went on to hold that the High Court had rightly exercised its jurisdiction in entertaining the writ petition under Article 226. This case has been very heavily relied on in the impugned judgment of the Division Bench.

19. Shri N. Nageshwar Rao further points out that the factual scenario in that case was different. That was a case where admittedly the name of the elected candidate was not in the voters' list and the elected candidate had tried to use similar name in the voters' list which was admittedly not that of the elected candidate. There was no necessity of any proof, as a voter list was an admitted document and it clearly displayed that the name of the Legislator was not included in the list. Therefore, the Court observed in that case in paragraph 27 which we have quoted above to the effect:

"In circumstances like the present one, bar Under Article 329 (b) will not come into play when the case false under Articles 191 and 193 and the whole process of election is over." (emphasis supplied)

20. We are afraid, we are not in position to agree with the contention that the case of K. Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526] is applicable to the present situation. Here the appellant had very specifically asserted in his counter affidavit that he did not belong to the Christian religion and that he further asserted that he was a person belonging to the Scheduled

Caste. Therefore, the Caste status of the appellant was a disputed question of fact depending upon the evidence.

Such was not the case in K. Venkatachalam v. A Swamickan & Anr.

[1999 (4) SCC 526]. Every case is an authority for what is actually decided in that. We do not find any general proposition that even where there is a specific remedy of filing an Election Petition and even when there is a disputed question of fact regarding the caste of a person who has been 15 elected from the reserved constituency still remedy of writ petition under Article 226 would be available.

21. Again as we have stated earlier, there was no dispute and no challenge to the findings of the High Court that K. Venkatachalam, the petitioner in case of K. Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526] was not a Legislator in electoral roll of the constituency for the general elections for December, 1984 and he blatantly and fraudulently represented himself to be a Legislator of the constituency using the similarity with the name of another person. The situation in the present case is, however, entirely different in the sense that here the petitioner very seriously asserted that firstly, he was not a Christian and, secondly, that he belongs to the Scheduled Caste.

22. Shri Gupta, however, further argued that in the present case what was prayed for was a writ of quo warranto and in fact the election of the appellant was not called in question. It was argued that since the writ petitioners came to know about the appellant not belonging to the Scheduled Caste and since the post of the Chairperson was reserved only for the Scheduled caste, therefore, the High Court was justified in entering into that question as to whether he really belongs to Scheduled Caste. In short, the learned counsel argued that independent of the election of the appellant as a Ward member or as a Chairperson, his caste itself was questioned in the writ petition only with the objective to see whether he could continue as the Chairperson. This argument is clearly incorrect as 16 the continuance of the appellant as the Chairperson was not dependent upon something which was posterior to the appellant's election as Chairperson. It is not as if some event had taken place after the election of the appellant which created a disqualification in appellant to continue as the Chairperson. The continuance of the appellant as the Chairperson depended directly on his election, firstly, as a Ward member and secondly as the Chairperson which election was available only to the person belonging to the Scheduled Caste. It is an admitted position that Ward No.8 was reserved for Scheduled Cast and so also the Post of Chairperson. Therefore, though indirectly worded, what was in challenge in reality was the validity of the election of the appellant. According to the writ petitioners, firstly the appellant could not have been elected as a Ward member nor could he be elected as the Chairperson as he did not belong to the Scheduled Caste. We can understand the eventuality where a person who is elected as a Scheduled Caste candidate, renounces his caste after the elections by conversion to some other religion. Then a valid writ petition for quo warranto could certainly lie because then it is not the election of such person which would be in challenge but his subsequently continuing in his capacity as a person belonging to a particular caste. The Counsel for the appellant rightly urged that the question of caste and the election are so inextricably connected that they cannot be separated.

Therefore, when the writ petitioners challenged the continuation of the appellant on the ground of his not belonging to a particular caste what they 17 in fact challenged is the validity of the election of the appellant, though apparently the petition is for the writ of quo warranto.

23. There is yet another distinguishing feature in case of K.

Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526]. In that case there is a clear finding that the elected person therein played a fraud with the Constitution inasmuch as that he knew that his name was not in Electoral Roll of that constituency and he impersonated for some other person taking the advantage of the similarity of names. The appellant herein asserts on the basis of his Caste Certificate that he still belongs to Scheduled Caste. We are, therefore, of the clear opinion that the case of K. Venkatachalam v. A Swamickan & Anr. [1999 (4) SCC 526] is not applicable to the present case and the High Court erred in relying upon that decision.

24. Once it is held that the aforementioned case was of no help to the respondents, the only other necessary inference which emerges is that the bar under Article 243 ZG would spring in action.

25. Shri Gupta, however, pointed out that it was specifically proved that the appellant was a Christian and as such he did not belong to the "Mala"

caste which was a Scheduled Caste. Now there is no dispute that the appellant was given two caste certificates within the definition of Section 2 (b) of the 1993 Act. There is also no dispute that these community certificates were obtained by the appellant and they were valid and genuine 18 certificates. It is also an admitted position that the certificates were never cancelled under Section 5 of the 1993 Act. The said certificates could be cancelled only under Section 5 after a full-fledged enquiry by the authority named in that Section. Under such circumstances we do not think that the High Court could have decided that question of fact which was very seriously disputed by the appellant. It seems that in this case, the High Court has gone out of its way, firstly in relying on the Xerox copies of the service records of the appellants and then at the appellate stage, in calling the files of the Electricity Board where the appellant was working. This amounted to a roving enquiry into the caste of the appellant which was certainly not permissible in writ jurisdiction and also in the wake of Section 5 of 1993 Act.

26. Again merely because the appellant was described as being a Christian in the service records did not mean that the appellant was actually a person professing Christian religion. It was not after all known as to who had given those details and further as to whether the details, in reality, were truthful or not. It would be unneccesary for us to go into the aspect whether the petitioner in reality is a Christian for the simple reason that this issue was never raised at the time of his election. Again the appellant still holds the valid caste certificates in his favour declaring him to be belonging to Scheduled Caste and further the appellant's status as the Scheduled Caste was never cancelled before the authority under the 1993 Act which alone had the jurisdiction to do the same. If it was not for High 19 Court to enter into the disputed question of fact regarding the caste status of the appellant, the findings recorded by it on that question would lose all its relevance and importance. There is one more peculiar fact which we must note. It has come in the judgment of the learned Single Judge as also in the Division Bench that the appellant "converted" to Christianity.

Now it was nobody's case that the petitioner ever was converted nor was it anybody's case as to when such conversion took place, if at all it took place. All the observations by the learned Single Judge regarding the conversion of the appellant to Christianity are, therefore, without any basis, more particularly, in view of the strong denial by the appellant that he never converted to Christianity. Again the question whether the petitioner loses his status as Scheduled Caste because of his conversion is also not free from doubt in view of a few pronouncements of this Court on this issue.

However, we will not go into that question as it is not necessary for us to go into that question in the

facts of this case.

27. Shri Gupta then contended that there was no opportunity for the writ petitioners to challenge the caste as the application filed by them for cancellation of the Caste before the authority under 1993 Act was never decided. It was pointed out that such application was filed on 18.04.2006 and various representations were also made to various authorities. We are not concerned with the various representations made to any other authority. However, if an application under Section 5 of the 1993 Act was made to the proper authority it was bound to be enquired into. However, 20 taking the advantage that it was not decided for four months, the writ petitioners could not have rushed with the writ petition. At the most, the writ petitioners could have asked for a direction to the said authority for deciding that application one way or the other. That was not done. If that application had been decided upon and the concerned authority had found that the appellant's caste certificate itself was false and fraudulent and he did not genuinely belong to the Scheduled Caste then that itself could have been enough for the appellant to lose the post that he was elected to. In our opinion, it is necessary to get examined the Caste certificates of all the elected persons from reserved constituencies within a time frame to avoid such controversies.

28. Be that as it may, in our opinion, the High Court clearly erred firstly, entertaining the writ petition, secondly in going into the disputed question of fact regarding the caste status, thirdly, in holding that the appellant did not belong to the Scheduled Caste and fourthly, in allowing the writ petition.

29. We, therefore, allow this appeal by setting aside two judgments one of the learned Single Judge and the other of the Division Bench of the High Court filed in appeal and direct the dismissal of the writ petition. The counsel's fee is assessed at Rs. 25,000/-. The appeal is allowed with the aforementioned directions.