

SUPREME COURT OF INDIA

M. Chandra

Vs.

M.Thangmuthu

C.A.No.7284 of 2008

(D.K. Jain and H.L. Dattu JJ.)

07.09.2010

JUDGEMENT

H.L. DATTU, J.

Facts :

1) In the election to Tamil Nadu Legislature Assembly held in May 2006, Rajapalayam constituency was reserved for members of the Scheduled Castes. Appellant, respondent No. 1, and eleven others had contested the elections. The appellant was declared elected.

Respondent No. 1 filed election petition inter alia questioning the election of the appellant. The election petition having been allowed by the High Court of Madras, this appeal is filed by the appellant.

2) The Nominations for the Rajapalyam assembly constituency were scrutinized on 21.04.2006 and

after scrutiny of the nominations, there were 13 candidates in the fray including the appellant and the respondent no.1.

The appellant contested as a candidate from the AIADMK party and was allotted the "two leaves" symbol. The respondent no.1 contested the election as an independent candidate and was allotted the "Finger Ring" symbol. The election for the said constituency was held on 08.05.2006. The result of the election was declared on 11.05.2006 and the appellant was declared as the successful candidate in the elections having secured the highest number of votes.

3) The respondent no.1 [Election Petitioner] challenged the result of the election by filing election petition under Section 81 read with Section 5(a), 100 (1)(a) and 125-A of the Representation of the Peoples Act, 1951. His prayer was for declaration of the election of the returned candidate as void and to declare the candidate with the next highest number of votes as the successful candidate.

Contention of the Election Petitioner:

4) The contention is that, the Rajapalayam assembly constituency is a reserved constituency and only candidates belonging to the Scheduled Caste are eligible to contest the elections from such constituency.

According to the petitioner, the respondent No.1 (appellant in this appeal) filed her nomination papers claiming herself to be a member of a Scheduled Caste by filing false declaration and suppressing material facts.

According to him, the appellant professes Christianity and her actual name is Glory Chandra and she is born to Christian parents. He claims that the husband of the appellant is Soosaimanickam and he too professes Christianity. He alleges that she studied in CSI High School, Batlagundu and not in Government High School, Devathanampatty as claimed in her nomination paper and as per school records, she belongs to Christian Pallan community. He also claims that the community certificate issued by the Tahsildar, Rajapalayam was procured by her, by exercising political clout and suppressing material facts and the said certificate was issued to the appellant within two days of the receipt of the application. He further asserts that even after the alleged conversion of the respondent, the voters list published for the year 1999, showed her name to be Glory Chandra. He also places reliance on the fact, that, the husband of the appellant made an application dated 27.4.1998, to the Bharat Sanchar Nigam Limited for a new phone connection, where his name is stated as Soosaimanickam. The petitioner also relies on the entries in original Birth Register of 1997, pertaining to the births in Erumalainaiickenpatti Village and they refer to the birth of a girl child to the respondent, whose then name is referred as Glory Chandra and the child's father's name is

referred as Soosaimanickam and their religion referred to as Christianity. Therefore, it is asserted that the respondent No. 1 is Christian by birth and continues to profess Christianity and therefore could not have contested from a reserved constituency.

Contention of the contesting respondent/appellant:

5) The respondent states that she was born to a Christian father and Hindu mother. Her father subsequently remarried. Her father deserted her and her mother when she was a child. She was brought up by her mother at her sister's house and claims to have severed all ties with her father. She claims that she was converted to Hinduism in the Arya Samaj in the year 1994. On 23.01.1995 she married one Murugan (who had converted to Hinduism in the year 1975) who belonged to Pallan caste. The respondent has stated that her marriage with Murugan took place as per the custom and practice in the Hindu Pallan Community at her husband's house in the presence of village Nattamai, who took the Tali and gave it to her husband to tie it around the neck of the respondent and at the time of marriage, a sum of Rs.250/- was given by the respondent's husband's family to the community known as Devendrakula Velalar Samooham. She claims that her community members are the members of Devendrakula Velalar Samooham. She obtained a community certificate in 1997, certifying the fact that she belonged to the Hindu Pallan community.

She specifically states that she did not find it necessary to inform the electorate of her conversion as she was born and brought up as a Hindu and practiced Hinduism. She states that she used to worship Hindu gods since childhood in the village temples and the nearby Kamatchiamman temple. When she attained puberty, the requisite ceremonies were performed according to Hindu customs. She also contested and won the Panchayat Ward no.3 election held in the year 2001. In the said elections no one filed any objection to the nomination filed by her. She clarifies that a daughter was born to her on 20.6.1997 and not the date mentioned in the Birth Register for the year 1997. She also denies that she intentionally did not file the Birth Certificate of her two daughters so as to reveal her religion. She also asserts that it is her brother Sudhakar Gnanaraj who had studied in Government High School, Devathanampatty, which is a co-educational institution and he assumed that the respondent being her sister, would have studied in the same school, and therefore, mentioned the same in the declaration filed along with the nomination papers, and the appellant came to Virudhunagar only on the morning of 20.4.2006 which was the last day for submitting the nomination papers and everything was done in a hurry.

Her brother Sudhakar Gnanaraj informed her that he prepared the nomination papers and it is enough if she signs, and she signed the declaration in a hurry because she had no reason to suspect that any mistake would have occurred. She further states that it was an inadvertent error that had crept in and does not help the election petitioner in any manner. She also claims that the averments in the election petition are false and have been brought about by the defeated candidate at the instigation of the rival DMK party. In sum and substance she would assert that she belongs to scheduled caste and has been accepted by the community as such.

6) The High Court had framed six issues for its consideration and decision. They are:- Whether the First respondent/Returned candidate suppressed the material fact that she belongs to Indian Christian Pallan Community as per her school records.

Whether the First respondent/Returned candidate made a false declaration relating to her community status and school education in her nomination as belonging to scheduled caste.

Whether the First respondent/Returned candidate converted herself to Hinduism in 1994 through the Arya Samaj, Madurai and whether the same was accepted by the Hindu Pallan Community.

Whether the Election petitioner is entitled for a declaration that the election of the First respondent/Returned candidate is void on the ground that she was not qualified to contest the election in the Reserved Constituency.

Whether the Election petitioner is entitled for a further declaration as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 209, Rajapalayam (SC) Assembly Constituency, Tamil Nadu in the election held on 8.5.2006.

To what other reliefs the petitioner is entitled to.

Findings of the High Court :

7) The High Court has observed that in the normal circumstance the burden of proof in an election petition lay on the petitioner, but, in view of the admission of the respondent, the appellant herein, that she was a Christian before converting to Hinduism in the year 1994, the burden of proof is shifted and it is for the appellant to show that she had renounced Christianity. The High Court after appreciating the evidence, both oral and documentary adduced by the respondent/Election petitioner is of the view that the circumstances in which the community certificate was granted was highly suspicious, as it was issued within two days of the receipt of the application. The court has further stated that it was likely that the appellant used her political influence to get the certificate issued in her favour. The High Court also has taken strong exception to the fact that the original conversion certificate was not produced by the appellant and only a duplicate copy of the same was produced.

Though in her testimony, the appellant had stated that the original conversion certificate was issued in the evening on 27.08.1994 and it was received by her uncle Santhakumar from Arya Samaj, Madurai and remained in his custody. The Certificate was not delivered to her and after the filing of the election petition, she asked her uncle Santhakumar to hand over the certificate to her. Thereafter, being informed by her uncle about the loss of the original certificate, she requested him to obtain a duplicate copy of the certificate and accordingly Santhakumar obtained Ex.R.13-duplicate copy of conversion certificate. Agreeing with most of the contentions of the election petitioner, the High Court has come to the conclusion that the burden of proof placed on appellant was not discharged satisfactorily. In conclusion, the Court has held that the appellant belongs to Pallan Christian Community and she could not have contested the Assembly elections from reserved constituency and, therefore, declared her election as void.

However with regard to declaring the next candidate as successful, the High Court has stated that the election law in this country does not recognize such a recourse to be adopted.

Submissions of the learned counsel for the appellant:

8) The learned counsel Sri Guru Krishna Kumar would submit, that, a person belonging to a caste enlisted in the Constitution (Scheduled Castes) Order, 1950, would be treated as a person belonging to such caste if he professes Hinduism. It is contended that the High Court has wrongly placed the burden of proof on the appellant contrary to the settled law. The appellant having been issued a community certificate in due course in accordance with law which remains in tact, it was not open to the High Court to ignore the same. It is further submitted that the impugned order is liable to be set aside for ignoring relevant evidence and for wrongly construing the evidence contrary to settled principles and is as such perverse.

It is also contended that the Arya Samaj ceremony that the appellant went through is a reiteration of the appellant that she would continue to profess the Hindu faith. While elaborating these contentions, the learned counsel would submit that the Constitution (Scheduled Castes) Order, 1950, sets out the castes, races and tribes in each State of India and provides that a person belonging to any of the castes specified therein be deemed to be a schedule caste for the purpose of the constitution. Paragraph 3 contains a proviso to the effect that notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu, Sikh or Buddhist religion shall be deemed to be a member of the scheduled caste and a combined reading of paras 2 and 3 of the Presidential Order would show that if a person belongs to a caste which is notified in the schedule to the presidential order, he/she would have status of a Schedule Caste, provided he/she professes Hinduism or one of the other religions specified in paragraph 3 of the order. It is further contended that the expression 'Profess' occurring in paragraph 3 of the Presidential order has been considered by a Constitution Bench (1965) 1 SLR.849. Therefore, the sine qua-non for a person to be treated a Scheduled Caste is that he must practice the Hindu religion. Reliance is also placed on the decision of this 589.

9) While elaborating the contention that the High Court has wrongly placed the burden of proof on the appellant contrary to the well established legal principles, the learned counsel would submit, that, the burden of proof is on the election petitioner in an election petition and it is his duty to establish his case beyond reasonable doubt. However, the High Court in its impugned order has erred in holding that it is on the appellant to prove the allegation and assertions made by the election petitioner and since the appellant failed to prove the negative, the prayer made in the election petition requires to be granted.

In aid of this submission, the learned counsel relies on the decision of this Court in the case of J. Chandra Shekhar

10) The learned counsel also contends that the appellant having been issued with a Community Certificate in due course in accordance with law, which is not yet cancelled by any competent authority, it was not open to the High Court to ignore the same. It is also submitted that the judgment and order passed by the High Court requires to be set aside for ignoring relevant evidence, and for wrongly construing the evidence on record contrary to settled principles. It is submitted that the High Court was not justified in disbelieving the certificate issued by Arya Samaj and further ought not to have come to the conclusion that the appellant failed to prove that there was conversion from Christianity to Hindu faith. It is also contended that it is settled law that once the parties have been permitted to produce evidence in support of their respective cases and if it is not their grievance that any evidence was shut out, the question of burden of proof loses significance and remains only academic. In aid of his submission, our attention was invited to the decision of this Court in the case of Raghunathi & Ltd. & Ors. (2006) 6 SCC 94.

Submission of the learned counsel for Respondent No. 1:-

11) The learned Senior Counsel Sri K. Rama Moorthy, appearing for Respondent no. 1 would submit that the name of the appellant is Glory Chandra and her name itself suggests that she is Christian and professes Christian faith and this is further fortified by the fact that she is born to Christian parents. It is further submitted that the appellant studied in CSI High School, Batlagundu and as per her school records, she belongs to Christian religion and this fact was suppressed by the appellant in the nomination papers filed by her. It is further submitted that the parents of the appellant are professing Christianity and the appellant was brought up as a Christian and further the marriage of the appellant was as per the Christian religion and the husband of the appellant is a member of a Church called Thuya Sahaya Annai Alayam. The learned Senior Counsel submitted that the appellant does not belong to Scheduled Caste, but by using her political clout has procured community certificate from Tahsildar, Rajapalayam, as if she belongs to Scheduled Caste Community. It is also submitted that in the absence of specific pleadings, in written statement on an issue, no evidence can be looked into in relation thereto. Our attention was invited to the decisions of this Court in the case of Raghavaiah & Anr. (1987) 1 SCC 254; Sri Venkataramana Ors. (1995) 5

SCC 347; Abubakar Abdul Inamdar (dead) by Balawantrao Shinde & Ors. (2003) 1 SCC 212 and Bondar Submission of the learned counsel for Respondent No. 2.

12) Shri R. Balasubramaniam, the learned Senior Counsel for Respondent No. 2, submitted that the election petitioner by specific pleadings in the election petition has discharged his initial burden that the appellant was born to Christian parents and her parents continues to profess Christian faith and even her school records would reveal that she belongs to Indian Christian Pallan Community and further that she was born and brought up as Christian and till date she professed Christianity and these assertions are not denied by the appellant and in fact that there are specific admissions that she was born and brought up as a Christian, since she was born to Christian parents and it is only in the year 1994, she converted herself to Hindu faith/Hinduism and if she was a Hindu throughout, then there was no reason for her to have gone through yet another ritual for her reaffirmation of Hindu faith in Arya Samaj and it is also contended that the intention of the converttee would be a relevant factor in deciding the truth or otherwise of the conversion, though the appellant pleaded that her ancestors were Hindus belonging to Pallan Community, there was conversion in to Christianity due to various reasons, but later she renounced Christianity and converted Hinduism and in the absence of supporting evidence to those pleadings, it must be held that the appellant is the first time converttee from Christianity into Hinduism. It is further contended that even the husband of the appellant was a Christian and continues to profess Christianity and it is only in the year 1975 he claims to have changed his religion to Hinduism. It is also contended that the appellant though claims she has converted into Hinduism through Arya Samaj, Madurai, she has failed to prove her conversion by leading cogent and acceptable evidence and therefore the High Court was justified in disbelieving her evidence. It was also contended that the appellant failed to prove that her marriage was as per Hindu religion. The learned Senior Counsel vehemently contends, that, there are two stages in appellant's life, namely, prior to conversion and after conversion. According to him, that in the reply filed in the election petition, there is no pleading that she was Hindu by birth and that till conversion she was professing Hinduism and that there is no pleading that at any stage she was professing Hinduism and or living Hindu way of life or believing in Hindu faith. Therefore, submits that the High Court was justified in allowing the election petition filed by Election petitioner.

Definition of Scheduled Caste:

13) We may begin to discuss this issue firstly by referring to weighty observations made by this Court in the case of Ganpat vs. Returning Officer, 1975 (1) SCC 589. "The monstrous course of untouchability has got to be eradicated. It has got to be eradicated not merely by making constitutional provisions or laws but also by eradicating it from the minds and hearts of men. For that it is even more important that members of communities who are untouchables should assert their self-respect and fight for their dignity than that members of the other communities should forget about it.

14) In order to bring the lower castes on par with the upper castes, there are special provisions in the Constitution to ensure that equal opportunity was not just in word but also in deed.

15) "Scheduled Castes" 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 purpose of the Constitution. For easy reference the said provision is extracted:

"341. Scheduled Castes. - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a 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."

16) Article 341(1) of the Constitution was considered by this Court (1996) 3 SCC 100. In that case, this Court held as under :- "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. Clause (2) of Article 341 empowers 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 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."

17) Under these provisions, the Constitution (Scheduled Castes) Order was issued in 1950. It sets out the caste, races and tribes in each State of India and provides under para 2, that a person belonging to any of the caste specified therein be deemed to be a Scheduled Caste for the purpose of the Constitution. Para 3 contains a proviso to the effect that notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu, Sikh or Buddhist religion shall be deemed to be a member of a Scheduled Caste.

Reading para 2 and 3 of the Presidential Order would show that if a person belongs to a caste which is notified in the Schedule to the Presidential Order he/she would have the status of a Scheduled

Caste, provided he/she professes Hinduism or one of the other religions specified in paragraph 3 of the Order.

18) The text of the Order is reproduced below:

"In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the States concerned, is pleased to make the following Order namely:

1. This order may be called the Constitution (Scheduled Castes) Order, 1950.

2. Subject to the provisions of this Order, the castes, races or tribes or parts, or groups within, castes or tribes specified in (Parts to (XXII) of the Scheduled to this Order shall, in relation to the States to which those Parts respectively related, be deemed to be Scheduled Castes so far as regards member thereof resident in localities specified in relation to them in those Parts of what Schedule.

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

4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976."

19) Prior to amendment, Clause (3) of the Constitution (Scheduled Castes) Order , 1950 came up for consideration before this court in the case of Punjabrao v. D.P. Meshram, [(1965) 1 SCR 849], wherein this court has observed, "what Clause (3) of the Constitution (Scheduled Castes) Order, 1950, contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that, he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in Karwade v. Shambhakar [AIR1958Bom296] has observed, that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly into a religious state" and that for this purpose a mere declaration by person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New Word Dictionary : "to avow publicly; to make an open declaration of; to declare one's belief in:

as, to profess Christ. To accept into a religious order." The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning "to declare one's belief in : as to profess Christ" is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word "profess" in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the Sikh) religion. Where, therefore, a person says, on the contrary, that he has ceased to be a Hindu he cannot derive any benefit from that Order".

20) The way we understand the order 1950, and the observation made by this court is, in order to claim the benefits of reservation under the Presidential Order, a person must establish that the caste to which he belongs is notified in the Presidential Order and he is not professing a religion different from the Hindu, the Sikh or the Buddhist.

Conversion of Religion - Burden of Proof:

21) It is not in dispute that Hindu Pellan Community is notified under the Presidential Order as Scheduled Caste. The appellant claims that though her father was a Christian, her mother continued to profess the customs of Hindu Pellan Community. It is her further case that her father deserted her mother when she was still a child and her mother brought her up as Hindu and her community accepted her and her mother as Hindu. Now the question is whether the appellant is professing and practicing Hinduism. The appellant claims that though her father is a Christian, her mother continues to profess Hindu religion and it is her further case that she was born and brought up as a Hindu by her mother and she continues to profess Hindu faith and in order to reaffirm her faith in Hinduism, she has undergone rituals in Arya Samaj Madurai, and in proof of it she has produced the duplicate copy of the certificate. At the time of hearing of this appeal a lot of debate was generated by both the sides with regard to certificate of conversion issued by the Arya Samaj. The appellant in support her view in her evidence has stated the various rituals she followed in the Arya Samaj to reaffirm her faith in Hindu faith, the reason why she is not in a position to produce the original certificate issued and the necessity for production of duplicate certificate. Since this forms the fulcrum of the case, the learned counsel for the respondents pointed out so called various discrepancies in the certificate and to say the least, the length, breadth, borders, dates, signature in the certificate. We will refer to these, when we discuss the veracity of the certificate produced by the appellant to reaffirm her faith in Hindu religion which she claims has professed right from her childhood. Before we do that, it is desirable to notice certain observation made by this court in the case of *Perumal Nadar v. Ponnuswami*, [1970 (1) SCC 605]. This court observed:

"6. A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion.

8. In *Goona Durgaprasada Rao v. Goona Sudarasanawami Mockett, J.*, observed that no gesture or declaration may change a man's religion, but when on the facts it appears that a man did change his religion and was accepted by his co-religionists as having changed his religion and lived and died in that religion, absence of some formality cannot negative what is an actual fact. *Krishnaswami Ayyangar, J.*, observed that a Hindu who had converted himself to the Christian faith returned to Hinduism and contracted a second marriage during the life-time of his first wife and remained and died a Hindu having been accepted as such by the community and co-religionists without demur. Absence of evidence of rituals relating to conversion cannot justify the Court in treating him as having remained a Christian."

22) In the case of *Ganpat v. Returning Officer*, (1975) 1 SCC 589, it was observed:

"11. In this connection it is necessary to remember that Hinduism is a very broad based religion. In fact some people take the view that it is not a religion at all on the ground that there is no one founder and no one sacred book for the Hindus. This, of course, is a very narrow view merely based on the comparison between Hinduism on the one side and Islam and Christianity on the other. But one knows that Hinduism through the ages has absorbed or accommodated many different practices, religious as well as secular, and also different faiths. One of the witnesses has described that he considered Buddha as the eleventh Avtar..... Hinduism is so tolerant and Hindu religious practices so varied and eclectic that one would find it difficult to say whether one is practising or professing Hindu religion or not."

23) In *Kothapalli Narasayya vs. Jamma Jogi* AIR 1976 SC 937, it is stated:- "These cases show that the consistent view taken in this country from the time *Administrator-General of Madras v. Anandachari* was decided, that is, since 1886, has been 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. There is no reason either on principle or on authority which should compel us to disregard this view which has prevailed for almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be reconverted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold....

A Mahar or a Koli or a Mala would not be recognised as anything but a Mahar or a Koli or a Mala after reconversion to Hinduism and he would suffer from the same social and economic disabilities from which he suffered before he was converted to another religion. It is, therefore, obvious that the object and purpose of the Constitution (Scheduled Castes) Order, 1950 would be advanced rather than retarded by taking the view that on reconversion to Hinduism, a person can once again become a member of the Scheduled Caste to which he belonged prior to his conversion. We accordingly agree with the view taken by the High Court that on reconversion to Hinduism, the first respondent could once again revert to his original Adi Dravida caste if he was accepted as such by the other members of the caste."

24) In *S. Anbalagan vs. B. Devarajan and others* (1984) 2 SCC 112, it is observed:- "These precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for reconversion to Hinduism of a person who had earlier embraced another religion.

Unless the practice of the caste makes it necessary, no expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him. In fact, it may not be accurate to say that he regains his caste; it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion."

25) In *Kailash Sonkar vs. Smt. Maya Devi* [(1984) 2 SCC 91], this court speaking through FAZAL ALI, J. made the following observation.

"In our opinion, there is one aspect which does not appear to have been dealt with by any of the cases discussed by us. Suppose, A, a member of the scheduled caste, is converted to Christianity and marries a Christian girl and a daughter is born to him who, according to the tenets of Christian religion, is baptised and educated. After she has attained the age of discretion she decides of her own volition to re-embrace Hinduism, should in such a case revival of the caste depend on the views of the members of the community of the caste concerned or would it automatically revive on her reconversion if the same is genuine and followed by the necessary rites and ceremonies? In other words, is it not open for B (the daughter) to say that because she was born of Christian parents their religion cannot be thrust on her when after attaining the age of discretion and gaining some knowledge of the world affairs, she decides to revert to her old religion. It was not her fault that she was born of Christian parents and baptised at a time when she was still a minor and knew nothing about the religion.

Therefore, should the revival of the caste depend on the whim or will of the members of the

community of her original caste or she would lose her caste for ever merely because fortunately or unfortunately she was born in a Christian family? With due respect, our confirmed opinion is that although the views of the members of the community would be an important factor, their views should not be allowed to (sic) a complete loss of the caste to which B belonged. Indeed, if too much stress is laid on the views of the members of the community the same may lead to dangerous exploitation.

But from that it does not necessarily follow as an invariable rule that whenever a person renounces Hinduism and embraces another religious faith, he automatically ceases to be a member of the caste in which he was born and to which he belonged prior to his conversion.... If the structure of the caste is such that its members must necessarily belong to Hindu religion, a member, who ceases to be a Hindu, would go out of the caste, because no non-Hindu can be in the caste according to its rules and regulations.

Where, on the other hand, having regard to its structure, as it has evolved over the years, a caste may consist not only of persons professing Hindu religion but also persons professing some other religion as well, conversion from Hinduism to that other religion may not involve loss of caste, because even persons professing such other religion can be members of the caste.... This is indeed not an infrequent phenomenon in South India where, in some of the castes, even after conversion to Christianity, a person is regarded as continuing to belong to the caste."

26) In *C.M. Arumugam vs. S. Rajgopal and Others* (1976) 1 SCC 863; the following observation is made by this Court.

"These cases show that the consistent view taken in this country from the time *Administrator-General of Madras v. Anandachari* was decided, that is, since 1886, has been 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. There is no reason either on principle or on authority which should compel us to disregard this view which has prevailed for almost a century and lay down a different rule on the subject. If a person who has embraced another religion can be reconverted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold. It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a scheduled caste and that is why certain favoured treatment is given to him by the Constitution. Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a scheduled caste. But when he is reconverted to Hinduism, the social and economic disabilities once

again revive and become attached to him because these are disabilities inflicted by Hinduism."

27) We must remember, as observed by this Court in Ganpat's case, Hinduism is not a religion with one God or one Holy Scripture. The practices of Hindus vary from region to region, place to place. The Gods worshipped, the customs, Traditions, Practice, rituals etc, they all differ, yet all these people are Hindus. The determination of the religious acceptance of a person must not be made on his name or his birth. When a person intends to profess Hinduism, and he does all that is required by the practices of Hinduism in the region or by the caste to which he belongs, and he is accepted as a Hindu by all persons around him.

28) Hinduism appears to be very complex religion. It is like a centre of gravity doll which always regain its upright position however much it may be upset. Hinduism does not have a single founder, a single book, a single church or even a single way of life. Hinduism is not the caste system and its hierarchies, though the system is a part of its social arrangement, based on the division of labour. Hinduism does not preach or uphold untouchability, though the Hindu Society has practiced it, firstly due to reasons of public health and later, due to prejudices.

(copied in bits and pieces from the book facets of Hinduism by Sri Swami Harshananda).

29) It is a settled principle of law that to prove a conversion from one religion to another, two elements need to be satisfied. First, there has to be a conversion and second acceptance into the community to which the person converted. It is obvious that the need of a conversion cannot be altogether done away with.

30) The appellant had examined herself as RW3. In her examination in chief, she has categorically stated, that as a Hindu, in her household they are celebrating festivals like Pongal, Vinayaka-Chaturthi etc. She has also stated that since her birth she has been living as a Hindu and following Hindu customs and tradition and her relatives are also treating her as Hindu and all her relatives are Hindus. She has also stated that she has not gone to any Church and she does not know about Christianity and that form of worship. In her constituency people knew her only as Chandra and not as Glory Chandra.

She has also stated that she contested in the elections held for Rajapalyam Panchayat Union Council from reserved constituency and nobody raised any objection. It has also come in her evidence that she wanted to reaffirm her faith in Hinduism and therefore she approached Arya Samaj, Madurai and after making her go through all the rituals, the Arya Samaj, Madurai issued a certificate of reconversion to Hinduism bearing Serial No. E56 dated 27.8.1994 (Ex. R13) and the same was received by her uncle Santnakumar and it is only when the election petition was filed, on her

enquiry she was told that the original certificate that was received by him has been lost and therefore she requested him to obtain duplicate copy of the certificate. It has also come in her evidence that her marriage was performed as per Hindu customs and her husband is Murugan, who also belongs to Hindu Pallan Community. She asserts that she lived as Hindu and continue to live as Hindu by following Hindu Customs and Traditions. She has faced a lengthy cross examination. The learned senior counsel Sri Ramamurthy has taken us through the entire evidence. We are afraid that whether anything worthwhile has been brought on record to discredit the veracity of the evidence of the appellant and in fact whatever suggestion that was put to falsify the conversion certificate issued by Arya Samaj, Madurai, the witness has denied all those suggestions. The learned counsel for the appellant contended that it is well settled that there is no requirement in law of producing any clinching evidence on any formal ceremony of conversion to Hinduism. Our attention is drawn to the observations made by this Court in *Perumal Nadar vs. Ponnuswamy* (1970) 1 SCC 605; *Per contra*, the learned senior counsel for respondents 1 and 2 would contend that the appellant has not proved her claim of reconversion to Hinduism by producing primary evidence viz., the original conversion certificate issued by Arya Samaj. The High Court while considering this issue has noticed that the appellant failed to produce the original certificate issued by Arya Samaj, Madurai and further has not examined Santnakumar, who was supposed to have received and retained the original certificate issued by the Arya Samaj and the original records have not been summoned from Arya Samaj and no steps have been taken to summon the responsible person from Arya Samaj to prove that the appellant underwent conversion. Therefore, the claim made by her about her reconversion cannot be accepted.

We do not agree with the reasoning of the High Court. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party. In the instant case, it is the specific case of the appellant that in the year 1994 that is much before the Assembly elections which was held in the year 2006, she had undergone all the rituals in Arya Samaj only for the purpose of reaffirmation of Hindu faith and the conversion certificate issued by Arya Samaj was received and acknowledged by her uncle Santnakumar who had accompanied her. It is also her specific case that she did not take back the certificate from her uncle, since she was of the view the same may not be required for her purpose. It is only when the election petition was filed, in order to prove her case of reaffirmation of her faith in Hinduism, she came to know that her uncle has lost the certificate, which necessitated her to obtain a duplicate copy of conversion certificate from Arya Samaj, Madurai. This part of her evidence is not even challenged by the petitioner. In fact the contents of the documents would clearly establish that it was issued for the second time on the request made by the appellant, after she was told by her uncle Santnakumar that the original certificate received by him in the year 1994 is lost by him. In our view, a perusal of the conversion certificate (Ex. R13) would amply demonstrate that the appellant has successfully proved her claim of re-affirmation of Hindu faith by undergoing rituals of conversion in the Arya Samaj, Madurai.

31) The High Court has placed reliance on the decision of this court in the case of Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and Ors. (AIR 2006 SC 543), to place the burden of proof on the appellant itself. The relevant portion of the judgment reads:- "15. Learned senior counsel for the appellant made a strenuous attempt to contend that the learned Judge of the High Court had wrongly placed the burden of proof in the case. We cannot agree. The trial judge has rightly proceeded on the basis that the initial burden was on the election petitioner to establish his plea that the appellant did not belong to a Scheduled Tribe. Though in a prior statement, an assertion in one's own interest, may not be evidence, a prior statement, adverse to one's interest would be evidence. In fact, it would be the best evidence the opposite party can rely upon. Therefore, in the present case, where the appellant is pleading that he is a Konda Dora, the statement in the series of documents, pre- constitution and post constitution, executed by his ancestors and members of his family including himself describing themselves as 'Kshatriyas', would operate as admissions against the interest of the appellant in the present case. These admissions also strengthened the admission of the appellant that in his school leaving certificate also, he is described as a 'Kshatriya' and his paternal uncle's son is also described as a 'Kshatriya' in his school leaving certificate and that uncle's son was also held to be a 'Kshatriya' on an enquiry made in that behalf.

Therefore, in our view, the trial judge was correct in holding that the election petitioner had discharged the initial burden placed on him and the burden shifted to the appellant to establish that he belonged to the 'Konda Dora' Tribe."

32) On a careful perusal of the judgment, it is possible to distinguish the present case on the basis of the facts and circumstances. In the above mentioned case, which the High Court has relied upon, there was no conversion from one religion to another. The question was whether the person belongs to Kshatriya Caste or a Scheduled Tribe. The question relates to caste within a religion as opposed to the present case, where there has been conversion from one religion to another. Therefore the reasoning given by the High Court to reverse and discharge the burden of proof is erroneous and the burden of proof should lie on the election petitioner to prove that the appellant still professes Christianity.

33) We, therefore express our disapproval to the findings of the High Court on this issue.

34) The appellant, in support of her case, has examined Sengaiah alias Chinna Sangaiah-RW4, Rasu-RW5, Govindan-RW6, Paulraj-RW7, and RW10-Surulimuthu.

35) Mr. Sengaiah (RW 4) belongs to the same village as the appellant. He has deposed that he knows the appellant as she was born and brought up in his village. It has also come in his evidence that the family deity of the appellant is Palichiamman.

She also used to worship Hindu Gods from her childhood in the village temples and the nearby Kamatchiamman temple. A ceremony was also performed on the appellant reaching puberty according to their caste customs and this was attended by his wife. The witness also states that the

appellant's betrothal ceremony also took place as per the customs of the Hindu Pallan community. This was attended by him. However he did not attend the marriage of the appellant. But he further deposes that the appellant used to attend several family functions organized by him. In the cross-examination he has admitted the suggestion that the marriage between Santhoshpackiam (appellant's mother) and Navakumar (appellant's father) was performed as per Christian religion. In our view, the only admission made by this witness in his evidence would not tilt the balance in favour of the election petitioner. It is the case of the appellant also that her father was a Christian and her mother was a Hindu. May be at the instance of her father, marriage could have been performed in a Church. As we have already observed, the appellant not only in her pleadings but also in her evidence states that her father separated from her mother and her mother continued to profess Hindu religion and the Hindu Pallan Community accepted her as such.

36) Mr. Rasu was examined as RW 5. He was the poojari in the Sundaranatchiamman temple situated in the Ayyankollakondan village. He knew the husband of the appellant as he was the native of the same village. He clarifies that he had the knowledge that the parties to the marriage were professing Christianity and later converted to Hinduism. He deposes that the marriage of the appellant took place in front of her husband's house as per Hindu customs. On the day of the marriage, the appellant and her husband came to the temple carrying garlands and pooja to the deity was conducted by RW 5. After this, the plate of garlands was returned and the bride and the bridegroom proceeded towards the marriage pandal near the house of the appellant's husband where the marriage was performed. He also deposes that the appellant and her husband worship the Sundaranatchiamman deity. He had signed the marriage certificate along with one Mr. Govindan who had signed in his capacity as the Village Nattamai. He also claims that before filing her nomination papers for the Assembly elections in May 2006, the appellant and her husband came to the Sundaranatchiamman temple and worshipped the deity.

This witness is cross-examined by the election petitioner, but nothing useful is elicited. Therefore, his evidence goes unchallenged.

37) Mr. Govindan was examined as RW 6. He states that he attended the marriage of the appellant. He went on to describe the rituals and the ceremonies that took place during the course of the marriage. He also mentions that he invited the appellant to his house for his daughter's puberty ceremony on account of her being a member of the community. Though he was subjected to lengthy cross-examination, the election petitioner could not elicit which discredit his evidence.

38) Mr. S. Paulraj was examined as RW 7. In his evidence he states that he belongs to Hindu Pallan Community. He also asserts that the appellant also belongs to Hindu Pallan Community. He has stated that he had attended the betrothal ceremony of the appellant which was performed at her maternal uncle Surulimuthu's house as per Hindu rites and customs. He also stated that he had gone to the new house of the appellant.

According to him, at the entrance of her house at Thendral Nagar, Rajapalayam, there is a picture of Lord Vinayaga printed on a tile affixed on the wall. Her pooja room also contains pictures of many Hindu gods. He also stated that RW 4 - Sengaiyah did not attend the marriage of the appellant and it is his wife and daughter who attended the marriage. The only admission by him in the cross-examination was Santhoshpackiam married Navakumar and their marriage took place in CSI School, Erumalainaickenpatti Village. In our view, this so called admission would not assist the election petitioner to prove that the appellant is a Christian and is continuing to follow Christian faith.

39) Mr. Surulimuthu, the maternal uncle of the appellant was examined as RW 10. He confirms that the marriage of the parents of the appellant was performed as per Christianity. He has confirmed that the appellant's father left the appellant, her mother and her two younger brothers to marry another woman.

He has also stated that the appellant, her mother and her younger brothers were taken care of by his father and lived in their household. He has stated that from childhood the appellant practiced Hinduism, visited temples, etc. He states that his family deity is Palichiamman and the community deity is Kaliamman. He also goes on to state that the appellant worships Palichiamman, Vinayagar and Kamatchiamman in the village. He stated that it was he who took the appellant to the Arya Samaj to change her name to Chandra. He also conducted the marriage of the appellant in Ayyankollakondan village as per the customs and traditions prevailing in Hindu Pallan Community. This witness in the cross-examination has again stated that the marriage of the appellant's parents was performed as per Christianity. The admission of this witness is put against the appellant by contending that the appellant in her evidence has made a false statement, that the marriage of her parents was performed as per Hindu customs. In our view, at the time of the marriage of her parents, appellant was not even born and not even conceived in the womb of her mother to overhear the conversation which was possible only in our Hindu mythology. Her statement that she has heard from her mother and her relatives and this admission, if we may so, cannot be put against the appellant that she is making false assertion.

40) Election petitioner has examined himself as PW 1. In support of his allegations and assertions made in the election petition he has examined T.P. Paulaswamy-PW2, Rajaiya-PW3, Rajendran-PW4, Mrs. D. Jaymanorama-PW5 and Arumugan- PW6. T.P Paulaswamy-PW2 is the Village Secretary of DMK Party in Ganapathy Sundaranatchiyapuram. Paulaswamy in his cross examination states that the father-in-law of the appellant is a member of Christian church. He also goes on to state that the name of the appellant clearly indicates that she professes Christianity. But later rather inexplicably, he states "I do not know as to which religion the first respondent no.1 and her family members are professing. At the instance of the election petitioner, I have come as a witness today." He further states that he does not know the mother of the appellant and has not visited the residence of the appellant. He further states that he has never been to the residence of Murugan (husband of the appellant) and does not know the father-in-law of the appellant. He does however concede that Murugan works for Harijan Welfare Department of the Government. He further states that he has not visited the church where Murugan's father (appellant's father-in-law)

was the Head of the church.

He also confesses he has no document to prove that Murugan's father belonged to any church. It must be noted that in the testimony of Paulaswamy, he claims that Murugan is a Christian, but has admitted that he contested in the bye election from Ward No. 3 in Rajapalayam Panchayat Union Council which was reserved for candidates belonging to the Scheduled Castes, which fell vacant when Murugan resigned from that seat. It is not clear to us how Murugan contested from this seat, if it was reserved for Scheduled Castes, if, as Paulaswamy says, he was a Christian. This is a clear contradiction in his testimony. He clearly specifies in his deposition that he was unhappy that the second respondent lost in the election.

41) Rajaiya-PW3, in his evidence admits that he is a member of the DMK Party. He has stated that the appellant contested the election in the name of Glory Chandra. He has further stated that the name of the appellant's husband is Soosaimanickam and he was invited to the wedding of the appellant. He attended the reception which according to him took place in a church near the appellant's husband's house. First he testifies that the father-in-law of the appellant was a 'Nattamai' of the church (village head) and then states that he does not know exactly about the religious practice according to which the marriage of the appellant took place. According to him, the name of the mother of the appellant is Mrs. Baikkam who is a Christian Pallan. But then he states that he has not seen any certificate which shows her to be a Christian. Prior to the appellant coming to his village for her marriage, he had no knowledge about the appellant. Before that he had no knowledge about her schooling or the place or manner of living of the appellant or her parents. He does not have any proof to state that the appellant professes Christianity. He further asserts that in the region, conversion from Hinduism to Christianity and vice versa happens frequently. He further stated that he knew no details about Mr. Navakumar (appellant's father).

42) Another important evidence which the Election petitioner has taken aid of is the birth register of the children of the appellant for the year 1997, where the name of the father of the child has been described as Soosaimanickam and the name of the mother has been described as Glory and the religion shows Christianity. All the relevant entries were listed in Ex. P 10. In his testimony, Mr. M.K Rajendran, PW4, Deputy Tahsildar, Periyakulam, Theni District clearly states that none of the entries in the Ex. P 10 register have been entered on the reporting of births by the parents. This is a very important admission on the part of the witness as this indicates that may be not many people had the knowledge of the conversion of the appellant and her husband. The entry cannot be relied upon by the respondent no.1 as it is mainly based on hearsay knowledge; because of the fact that the parents had themselves not reported the birth of the child. In the present case, the child birth was reported by the Village Head Nurse.

She also states that she knows neither Soosaimanickam nor Glory.

43) We now move over to the deposition of Mr. S. Arumugan- PW6 presently working as Tahsildar, Rajapalayam. According to his deposition, the husband of the appellant applied for a permanent community certificate from Adi Dravidar Welfare Department, vide application dated 27.3.1997 (Ex. P 13). The application was received by the Tahsildar's office on 2.4.1997.

He clearly states that he did not receive Ex. P 13. At that point of time he was Junior Assistant at different place. On the backside of the said application there are written endorsements of the Village Administrative Officer, Ayyankollkondan Revenue Inspector, Ayyankollkondan and Tahsildar, Rajapalayam. All the endorsements state that the appellant is from the "Hindu Pallan" backward class. The Village Administrative Officer had recorded the statement of the witnesses which have been duly certified by him. The respondent no.1 has pointed out to certain discrepancies in the grant of the community certificate.

There has been reference to the fact that the Tahsildar, Rajapalayam had not put his signature to the endorsement of the Deputy Tahsildar where he had written to the Revenue Inspector, Ayyankollkondan, asking for proof with respect to the appellant's caste. Later no documents evidencing the community of the appellant were produced. In these circumstances, it would have been worthwhile to call the then Tahsildar, Rajapalayam and examine him as a witness and also the Village Administrative Officer. The Election petitioner also contends that the certificate was issued on 4.4.1997 within 2 days of receipt which was enough to raise doubts as to the veracity of the said certificate. Also as per the deposition of the present Tahsildar, there is no prescribed format for the issuance of a community certificate. In such a situation it will be difficult to establish whether there has been any discrepancy in the issuance of the certificate. There was no cancellation endorsement on the application for the certificate. It has not been brought on record by the Election petitioner by way of evidence or by questioning the relevant authorities, as to whether there was proper enquiry before the endorsement was made by the revenue authorities.

44) Mr. V.P Ranjan-RW1 (the original respondent no.2) was also examined as a witness. He is also member of the rival DMK party. He had obtained a copy of the voters list for Andipatty assembly constituency for the year 1999 by filing an application under the Right to Information Act. In Ex. R1, serial no. 865, the voter's name has been mentioned as "Glory Chandra". This fact is referred to by the respondent as being a definite proof that the appellant is still professing Christianity. However his own admission, it is not mentioned in Ex. R1 that the appellant is a Christian. He further states that he has not denied in his counter that the marriage of the appellant was as per Hindu customary rites. He also clarifies that he has not stated anywhere that the marriage of the appellant took place as per Christianity. He clearly states that he does not know much about any of the friends or the family of the appellant and her husband.

45) We move over to the testimony of the K.V Balasubramaniam (R.W 2), who is the General Manager, Bharat Sanchar Nigam Limited, Virudhumagar Telecom District. The Election petitioner has contended that the application of a telephone connection made by the husband of the appellant

showed his name as Soosaimanickam. The application was made in 27.4.1998.

There was no name and photograph affixed to the application.

More importantly, as per the deposition of R.W 2 there is no column showing religion or caste of the applicant. Also he has not seen the applicant put his signature on the form. As clarified by him, there is no rule that only the owner of the property can apply for the telephone connection. Even the tenant can apply for the telephone connection. Therefore it is possible that someone on behalf of the appellant's husband might have come to fill the application. There is no bar against it as the customer service centre is open to the general public for registering new telephone connection.

46) After perusal of the deposition of witnesses of both sides, the following relevant points emerge.

47) The contentions of the election petitioner is that parents of the appellant are Christians and their marriage was performed in a Church according to the traditions followed by Christians. This assertion of the election petitioner is denied by the appellant both in her counter statement and in the evidence. She has admitted that her father Navakumar was Christian but her mother was Hindu throughout and the marriage of her parents took place as per the customs prevailing in Hindu Pallan community. It is true that in the counter statement filed she has stated that though she was following Hindu customs, traditions, ceremonies and the other customs prevailing in Hindu Pallan Community in order to reaffirm her faith in Hinduism, she went through various rituals in Arya Samaj, Madurai on 27.08.1994.

Apart from this, she has also stated that her husband Murugan got converted into Hinduism in the year 1975 and their marriage took place in the year 1995 according to Hindu tradition and custom. It looks to us that an honest and true statement made by the appellant that she has undergone the rituals in the Arya Samaj for the re-affirmation of her faith in Hindu religion has put her in a black spot and the same has persuaded the learned Judge who decided the lis between the parties to shift the burden of proof. In our view, the pleadings and the evidence adduced in support of the same requires to be read conjointly and not by applying the hypertechnical approach of reading between the lines to arrive at a finding against a candidate in an election petition who has support of the majority of the people in the constituency. This approach in our opinion would defeat the entire election process. Hypertechnically requires to be eschewed and the ground realities requires to be kept in view while deciding these types of cases. We hasten to add, that this approach need not be adopted when an election petition is filed on the grounds of corruption, inciting people on the ground of particular religion etc. In the instant case, merely because the appellant had stated in her counter affidavit that she got converted into Christian faith in the year 1994 in Arya Samaj, Madurai, after following the required essential rituals, the learned Judge while deciding the lis between the parties has shifted the burden of proof on the appellant to disprove that she is not a Christian but a person practicing Hindu faith and the community has accepted her as a person

belonging to Hindu Pallan Community. This reasoning of the learned Judge runs counter to the settled legal principles. We say so for the reason, that in an election petition the burden of proof lies on the person who accuses that the elected person who had the support of the majority of the electorates still does not deserve to represent them in the State Assembly. We reiterate that in the present case, the appellant candidly accepts that her father Navakumar is a Christian, but her mother who is separated from him never practiced Christian faith but continued to follow Hindu religion even after her marriage. The election petitioner has not produced any acceptable evidence to disprove the evidence adduced by the appellant and her witnesses.

Therefore, issue of parentage which was sought to be projected as a factor which would prove that the appellant is a Christian and brought up as a Christian cannot be accepted. Reference can be made to the decision of this Court in the case of Kailash ³². Another aspect which one must not forget is that when a child is born neither has he any religion nor is he capable of choosing one until he reaches the age of discretion and acquires proper understanding of the situation. Hence, the mere fact that the parents of a child, who were Christians, would in ordinary course get the usual baptism certificate and perform other ceremonies without the child knowing what is being done but after the child has grown up and becomes fully mature and able to decide his future, he ought not to be bound by what his parents may have done.

Therefore, in such cases, it is the intention of the converttee which would determine the revival of the caste. If by his clear and conclusive conduct the person reconverts to his old faith and abjures the new religion in unequivocal terms, his caste automatically revives.

33. Another dominant factor to determine the revival of the caste of a convert from Christianity to his old religion would be that in cases of election to the State Assemblies or the Parliament where under the Presidential Order a particular constituency is reserved for a member of the scheduled caste or tribe and the electorate gives a majority verdict in his favour, then this would be doubtless proof positive of the fact that his community has accepted him back to his old fold and this would result in a revival of the original caste to which the said candidate belonged.

48) The other minor issue which was argued was that in the school records, it is recorded that the appellant belongs to Indian Christian Pallan community and she studied in CSI School, Baltagundu but in the declaration filed along with nomination papers, it is stated that she studied in Govt. High School, Devathananpatti and, therefore, she has made false declaration and therefore she was ineligible to contest from the reserved constituency. The appellant in her counter affidavit and also in her evidence has explained that the discrepancy in the declaration form filled by her brother, who was assisting her in filing the nomination papers. We have perused the stand of the election petitioner and the evidence of the appellant. In our view, the discrepancy pointed out by the election petitioner has been properly explained by the appellant and in our view, this by itself cannot be a ground to hold that the appellant was ineligible to contest from the reserved constituency.

49) In so far as issuance of community certificate to the appellant, in our view the evidence of PW6 amply demonstrates that due procedure was followed while issuing the Community Certificate. The High Court, in our considered view has not properly appreciated PW6 evidence while doubting the genuineness of the Community Certificate produced by the appellant. Therefore, we do not approve the reasoning of the High Court on this issue. We also add that the learned senior counsel for contesting respondent in this appeal relied on certain observations made by this Court in the case of Kumari Returning Officer & Ors. (1984) Supp. SCC 77; John Bodh Raj (2008) 2 SCC 186. In our considered view, these decisions were rendered by this Court in different context altogether. Reference to the facts in those cases and the law laid down therein, in our opinion, we would be unnecessarily adding few more pages to this Judgment. We desist ourselves from doing so.

50) Reliance placed on the birth records, entries in the telephone application and voters list cannot be the sole ground for proving that the appellant is professing Christianity. As stated above, the records could have been made by people other than the appellant or her husband. As far as the birth register is concerned, it is clear that the birth was reported not by the parents, but the Village Head Nurse. Similarly, it is very likely that after her conversion, the appellant never went ahead and changed the name appearing in the voter's list. Also it is not mentioned in the voter's list as to what religion the appellant professes. There is a common pattern arising that all the witnesses of the Election petitioner as well as the original respondent no.2 are affiliated to the rival party DMK in some capacity or the other as opposed to the appellant who represented the AIADMK party. The Election petitioner has relied heavily on the testimony of the witnesses Mrs. Deivathai, T.P Paulasamy and Rajaiya to prove that the appellant continues to profess Christianity. However the testimony of all the three witnesses are highly contradictory and hearsay. All the three witnesses have come to know about the religion of the appellant and her husband from other people. Admittedly, none of them have come in close contact with the appellant, appellant's husband and both their families in any form. They have not produced any proof or document to prove that the appellant professes Christianity.

Requirements of Petition under Representation of Peoples Act:

51) Section 83 of the Representation of Peoples Act, 1951 deals with the contents of an election petition. Section 83 (1) of the Act reads:- "An election petition:- (a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings."

52) It is a settled legal position that an election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. To see whether material facts have been duly disclosed or whether a cause of action arises, we need to look at the averment and pleadings taken up by the party.

53) In the case of *V.S Achutanandan v. P.J Francis* [(1999) 2 SCR 99], it was held that failure to plead material facts is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time limit prescribed for filing the election petition.

54) One cannot file an election petition based on frivolous grounds.

The facts presented must be clear, concise and unambiguous.

All the above cases and provisions, though do not deal directly with the issues in this case, they go on to emphasize that an election result, where the people elect their representatives cannot be taken lightly. For an election result to be annulled, there must be positive evidence to prove illegality of the election. The natural corollary is that the person who files an election petition, must have a clear and definite case, to prove that the election was illegal. Therefore the burden of proof shall lie on the petitioner filing the election petition.

55) An election petition challenging the election of a returned candidate on the grounds of corrupt practices is not a criminal proceeding; but it is no less than a criminal proceeding with regard to the proof required to be furnished to the Court by the Petitioner [See *J. Chandrashekara Rao v. V. Jagapati Rao*, 1993 Supp (2) SCC 229]. Though, in the present case, the charges are not those of corrupt practices, they are not any lesser in terms of seriousness; hence the burden of proof is on the election petitioner to prove the charges he has made beyond reasonable doubt. This is done so that the purity of the election process is maintained.

56) The testimony of the witnesses for the Election petitioner does not qualify the test laid down in the Evidence Act, to make the evidence admissible. It does not inspire any confidence. The evidence is clearly hearsay. As stated above, the opinion of the High Court is heavily relied on the fact that the burden of proof had been discharged and shifted to the appellant to prove that she had indeed renounced Christianity. We do not approve with the reasoning of the High Court to adopt this line of thinking.

The burden of proof lay squarely on the Election petitioner to show that the appellant indeed practiced and professed Christianity. In any event, the evidence put forward by the appellant is consistent and reliable as it has relied on the testimony of people who have actually visited the house of the appellant or attended her wedding or been in close proximity with her and her husband's family.

57) Assuming for a moment that the High Court is justified in shifting the burden of proof on the appellant, we are of the view that the appellant by adducing cogent and reliable evidence has discharged the same. The appellant's testimony is consistent with the documentary evidence produced by her. The evidence of Shri Sengaiyah (RW 4) and S. Paulraj (RW 7) also support the facts stated by the appellant. The fact that the appellant was a trustee of the Mayurarathaswamy Temple at Rajapalayam is supported by the testimonies of Shri. P. Magesh (RW 8) and Shri. K. Paramasivam (RW 9). Though the appellant has not produced the original conversion certificate, there is no reason to disbelieve the duplicate that she has submitted, as the petitioner has failed to provide a reasoned rebuttal to the evidence adduced by the appellant, to proof her case.

Validity of community Certificate & Evidence Act :

58) There is nothing on record to show that the community certificate was issued illegally or in contravention of the valid procedure. The Election petitioner should have examined the person in charge while the certificate was being issued to bring to light any alleged malpractice in the issuance of the said certificate. The validity of the issuance of the community certificate is presumed unless shown otherwise by the respondent no.1, who clearly failed to do so. It is also baffling to note that the conversion certificate from the Arya Samaj was not examined in detail by the respondents inspite of the High Court making a strong observation in this regard. No proof by way of documents or oral evidence was provided to show how the certificate was granted and what procedure was followed. It is also pertinent to mention that no one raised any objection to the appellant filing her nomination for the Assembly elections in 2006 from the reserved constituency. All the issues have been raised after the appellant won the election from the Rajapalayam constituency. As pointed by the High Court, it is not necessary to read too much into contributions made into religious bodies and institutions as it is open for people outside the particular community also. Hence based purely on the evidence before this court and the observations made by us in this regard, the Election petitioner has not been able to prove conclusively that the appellant professes Christianity. The evidence produced is, contradictory and smacks of political rivalry.

59) In light of these findings, we need not go into the other issues.

60) In the result we allow this appeal and set aside the impugned order passed by the High Court. No order as to costs.

