

DELHI HIGH COURT

Khazan Singh

Vs.

Union of India, (Delhi)

Civil Writ No. 1211 of 1976.

(S. Ranganathan, J.)

30.8.1979

JUDGEMENT

S. Ranganathan, J.

1. This writ petition, according to the petitioner, is an offshoot of Civil Writ No. 1375 of 1975, earlier filed by him.

2. Khazan Singh, the petitioner, is an ex-Sub-inspector of Police. He is a Jat, by caste, his father Hazari Lal being a milk vendor belonging to that caste. The petitioner claims to have been adopted by Kishan Lal who is a Julaha (Kabirpanthi) by caste. The petitioner's allegation is that his natural father and adoptive father had been doing dairy business in partnership since 1947, that the petitioner was one of four sons of his father, that the adoptive father was very old and adoptive mother had developed T.B. and they had no issues of their own and that therefore the petitioner's natural parents and adoptive parents agreed to give and take the petitioner in adoption into the family of Sri Kishan Lal. It is alleged that a deed of adoption was executed on 5-1-1989 on a stamp paper of Rs, 25 (a photostat copy of which is Annexure-'A') and that certain customary ceremonies were also performed on the same day which are evidenced by a photograph taken on the occasion (Annexure -'B'). According to the petitioner therefore, he is entitled to be treated as a member Julaha (Kabirpanthi) caste which is a scheduled caste (S.C., for short) within the meaning of Article 341 of the Constitution.

3. Sometimes in December, 1870 the petitioner applied to the Deputy Commissioner, Delhi in a prescribed form for the grant of a scheduled caste certificate, apparently as he contemplated entering Government service shortly. From the original application made by the petitioner to the Deputy

Commissioner (D. C. for short) it is seen that the petitioner had stated therein that he was the adopted son of Kishan Lal and that the purposes for which the certificate was required was : "service". It is common ground that this application was attested and a certificate to the effect that the petitioner belonged to the Julaha caste was also annexed thereto from a Member of the Metropolitan Council, Delhi as prescribed in the form itself. On 26-12-1970, a certificate was issued by the office of the Deputy Commissioner, Delhi certifying that the petitioner, adopted son of Sri Kishan Lal, belonged to the Kabirpanthi Julaha caste which is recognised as a scheduled caste and that he and his family ordinarily resided in No. 163, Moti Bagh, Sarai Rohilla, Delhi. The certificate bore the seal of the Office of the Deputy Commissioner and was signed by Sri H.D. Birdi, for the Deputy Commissioner.

4. In January, 1971, the petitioner made an application for recruitment to the post of Sub-Inspector in the Delhi Police for which applications had been invited by the Inspector General of Police. In the application form the petitioner claimed to be a member of a scheduled caste and attached an attested copy of the D. C.'s certificate to this effect. A little later, in March, 1971, he was called upon to produce the certificate of his being a scheduled caste from a prescribed authority (and certain other documents) at the time of interview to be held on 18-3-1971. From the endorsement on the back of the application it would appear that after scrutinizing the papers produced, the authority concerned was satisfied that the petitioner was the member of a scheduled caste. In due course the petitioner was appointed as a temporary Sub-Inspector (Executive) in the Delhi Police, completed his period of training as prescribed in the Police Rules and was discharging his duties as Sub-Inspector, according to him, very satisfactorily. However, by an order dated 19-3-1975, the Assistant Inspector General of Police terminated his services ostensibly under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules 1965 (hereinafter briefly referred to as the 'T.S. Rules'). The validity of this order of termination is the subject matter of C.W. 1375 of 1975.

5. On the 6th January, 1976 the Officer in Charge, (CCS), of the Office of the Deputy Commissioner, Delhi issued a notice to the petitioner. In this notice it was stated, after referring to the certificate issued on 26-12-1970, that information had been received that the petitioner was not a Kabirpanthi (Julaha) "by birth and therefore not entitled to get the certificate mentioned above." The

petitioner was therefore required to show cause why the above mentioned certificate should not be cancelled and other appropriate action taken against the petitioner for giving false information and concealing facts in order to obtain the certificate. The petitioner sent a reply dated 14-2-1976. In this reply his main contention was that it was not necessary that a person should belong to a scheduled caste by birth only and that a person could become a member of a scheduled caste even by adoption. He also stated in his reply that all necessary information had already been given at the time of application and that the certificate had been claimed only on the basis that he had been adopted by Kishan Lal. There was some further correspondence details of which are not relevant. Finally on 5th April, 1976 an order was passed by which the certificate granted on 26-12-1970 was purported to be cancelled. The order was signed by Sri G.S. Srivastava, Officer, In charge (Misc.), for the Deputy Commissioner, Delhi. It is necessary to extract this order in full as it is relevant for appreciating the contentions raised by the parties:-

"Whereas Shri Khazan Singh was issued a certificate No. 6031/Caste/CCS/79 dated the 26th December, 1970 certifying him to be belonging to Kabir Panthi Julaha caste on the basis of his adoption by Kabir Panthi parents.

And whereas it was found that adoption was not valid under the provisions of Hindu Adoptions and Maintenance Act, 1956 and therefore Sri Khazan Singh is not entitled to have a Scheduled Caste Certificate in his favor.

And whereas he was issued a show cause notice dated 6th February, 1976 to show cause why the above mentioned certificate should not be cancelled and reply to which has been considered and has been found untenable.

Now, therefore, I.G. Srivastava, Officer-In charge (Miscellaneous) hereby order that the above mentioned certificate be treated as cancelled forthwith"

6. In this writ petition the validity of the order dated 5th April 1976 is challenged. Apart from questioning the validity of the order, the petitioner also attacks its bona fides. According to him, the police department (respondents 4 and 5) have been instrumental in having the certificate cancelled by respondents 2 and 3, as they were annoyed with the petitioner for having filed C.W. 1375 of 1975.

7. On the other hand, the two sets of respondents have filed elaborate and

detailed affidavits. According to these affidavits, the petitioner had obtained the certificate by concealing material facts. The adoption was challenged as being invalid and insufficient to make the petitioner an S.C. It was also contended that the claim of adoption was also a fake claim and that there had been in fact no such adoption as had been alleged. These allegations are attempted to be supported by a mass of affidavit evidence and, as can be expected, the petitioner has filed a rejoinder to which are annexed a large number of affidavits in support of his claim.

8. In my opinion, the issues to be determined in this writ petition lie in a very narrow compass and it is not necessary to examine the allegations and affidavits produced by the two parties. In particular, no allegation that the adoption was not genuine was ever put to the petitioner or his reply thereto ever called for. Though it appears that some investigations were carried out by the police and the respondents *prima facie* had reason to believe that the adoption had not really taken place, that was not a charge mentioned in the notice nor is it the reason given in the order of cancellation of the certificate. I am, therefore, not called upon to give any findings on the issue of "genuineness of the adoption" - even if I were inclined to do so in a writ petition - and proceed on the footing that the factum of adoption is not in challenge. I have already referred to the notice given by the Deputy Commissioner as well as the order passed by him cancelling the certificate earlier granted. In the show-cause notice dated 8-2-1976 the short point raised was that the petitioner could not be treated as a scheduled caste because he is not one by birth and that therefore the certificate issued earlier was erroneous and deserved to be cancelled. It is no doubt true that this notice also referred to other appropriate action being taken against the petitioner for giving false information and concealing facts in order to obtain the above certificate. But the notice gave no details. The information on which action was proposed to be taken or the manner in which the petitioner was believed guilty of falsity and concealment were not indicated and when to the above notice the petitioner gave a reply in which he claimed that he had given all the information necessary and that his request for a certificate based on adoption was quite proper, the issue was not pursued further. Instead, the final order of the D. C. accepted the position that the certificate had been issued on the basis of his adoption but considered that it had to be cancelled as the "adoption was not valid" under the Hindu Adoptions and Maintenance Act, 1956 (the Act, for short). In view of this, the only one short question that arises

for consideration is whether the adoption is not valid under the Act and it can be easily answered. However, Sri Iswar Sahai raised the contention that a person cannot change his caste even by a valid adoption and since this is a pure question of law and had been raised in the notice issued to the petitioner, I permitted him to raise the issue.

9. The issue thus raised is an interesting one as to the concept of caste in Hindu Society and as to the circumstances in which a person can become a member of a caste. It is somewhat ironical that such a question should have come up for consideration at a time when the Indian legislature has heaved a sigh of relief in its attempts to reform Hindu Society by the enactment of the new Hindu Code (comprising of the Marriage Act, the Adoptions and Maintenance Act, The Guardianship Act and The Succession Act) one of the principal aims of which was to abolish all caste distinction in Hindu Society. Concepts of validity or otherwise of Anuloma and Protiloma marriages that tormented earlier generations lost their meaning by the validation of all marriage between any two Hindus irrespective of their caste. Adoption, under the common Hindu Law, was permissible only between persons belonging to the same caste but this restriction was done away with by the Hindu Adoptions Act. Rules of succession based on caste also presumably lost all force. And now, this head of medusa rears itself up once again, curiously enough, on the shoulders of a legislation intended to ameliorate inequalities in society due to another obnoxious pattern of discrimination based on caste. There were certain "castes" which had due to reasons which need not be gone into, lagged far behind others and required to be given a special fillip or handicap at the hands of society if they were to advance to a status of equality with the rest of society. The Constitution, therefore, made special provisions for these castes and their advancement, inter alia, in matters of employment in Government Service by making reservations for them and making elaborate rules to ensure their consideration in sufficient numbers and proportion for various posts. To make it easy to recognize them and encourage them properly, the names of these castes were enumerated in various orders promulgated under the Constitution and they were given the generic name of "Scheduled Castes" (S.C.). It is in the context of the privileges conferred on members of such a caste that the present question arises.

10. As explained by the Supreme Court, reviewing earlier decisions, in

Arumugham v. Rajagopal, a caste is a voluntary association of persons for certain purposes. It is a well defined, yet fluctuating, group of persons governed by their own rules and regulations for certain internal purposes. They are formed on the basis of community of religion or of functions. It is a social combination the members of which are enlisted by birth and not by enrolment. People do not join castes or religious fraternities as a matter of choice (in one respect); they belong to them as a matter of necessity; they are born in their respective castes or sects. Thus, to start with, a caste is a social group having its own rules and regulations, to which certain people belong by birth. A birth in a caste marks the new born as a member of the caste.

11. But the caste is a voluntary association in the sense that persons can go, or be sent, out of the caste; equally, newcomers may be admitted into the caste. As Ganapathy Iyer points out in his Hindu Law, it cannot be said that "membership of caste is determined only by birth and not by anything else", Chandavarkar, J. observed in *Nathu v. Keshavji* ²

"It is within the power of a caste to admit into its fold men not born in it as it is within the power of a club to admit anyone it likes as its member."

Thus, in *Horo v. Jahan Ara*, ³ the question arose whether a lady, Christian by birth, could contest for election in a constituency reserved for scheduled tribes, on the strength of the fact that she had married a member of that tribe. The Supreme Court answered the question in the affirmative because, on examining the customary practices of the Mundas, it was found that such a marriage was permissible and that the lady had also been received with approval by the elders of the community. The Supreme Court quoted with approval the words of Krishnaswami Iyengar, J. in *Durgaprasada Rao v. Sudarsanaswamy* ⁴ that "in matters affecting the well being or composition of a caste, the caste itself is the Supreme Judge".

12. Two different aspects of the same question came up for consideration in Arumugham's case (supra). The first respondent was originally a member of Adi Dravida Caste, which was a Scheduled Caste. He became a convert to Christianity in 1949 and on such conversion he ceased to be an Adi Dravida and therefore also ceased to be a scheduled caste as per para 3 of the Constitution (Scheduled Castes) Order 1950. Subsequently, he became a reconvert to Hinduism, and claimed that on such reconversion he became an Adi Dravida

once more and as such entitled to contest for a Parliamentary Constituency reserved for Scheduled Castes. An initial battle in 1967 was lost by the respondent (vide AIR 1969 Supreme Court 101) for failure "to establish that he became a member of Adi-Dravida, a Hindu Caste alter he started professing the Hindu religion." In a subsequent election contest in 1972, however, he was successful. The Supreme Court, first dealing with the effects of his conversion to Christianity, held that a conversion does not necessarily result in extinguishment of casts and that notwithstanding conversion a convert may enjoy the privileges, social and political, by virtue of his being a member of the community with its acceptance. This would depend entirely on the structure of the caste and its rules and regulations and on how the caste looks at the question of conversion. Then, on the question of reconversion, Bhagwati, J. speaking for the court, pointed out :

"Since a caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations, so provide admit a new member just as it may expel an existing member. The rules and regulations of the caste may not have been formalized : they may not exist in black and white; they may consist only of practices and usages."

It was pointed out that 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 receive him as a member. On the facts, the question was answered in favour of the first respondent.

13. The same test was applied also in *Principal, Guntur Medical College v. Mohan Rao*,⁵ the facts of this case are relevant here in two respects. The first is that the respondent was a Christian by birth, he having been born of parents who had been members of the Madiga Caste but who had been converted to Christianity at some point of time which did not appear from the record but, admittedly, before he was born. There was no evidence before the Court, unlike in Arumugham's case (supra), as to whether the Madiga Caste (Sic) and that the respondent, therefore, was not a Madiga by birth. The second aspect relates to the circumstances of his reconversion. Christians were recognized as backward classes for purposes of admission to the appellant college, but the respondent's claim for admission in 1973 on this basis was not successful. Thereupon on 20-1-1974 he got himself converted to Hinduism and claimed that he had been

accepted by the Madigas as a member of their caste. On the strength of this claim, he applied for admission as a Scheduled Caste candidate and was provisionally selected, Subsequently, however, the admission was cancelled "as he was not a Hindu by birth." The Supreme Court held, applying Arumugham's case (supra) that, notwithstanding being a Christian by birth, the respondent could become a Madiga if accepted by the community. In view of a concession by the State, the Court did not go into the question of fact as to whether it had been established that he had been so admitted.

14. These decisions clearly establish two propositions which are relevant here:

- (a) That a person is a member of a caste in which he is born; and
- (b) That a person who is not born in the caste or who has lost it by conversion to another religion (or like reason) can get admitted or readmitted into the caste, of its members so agree.

15. The question now is whether a case of adoption - a valid and genuine adoption, not a mere device - is analogous to category (a) or to category (b) above mentioned. On such adoption, does a person *ipso facto* and without more become a member of the caste, as on birth - as contended for by Sri Dhar - or does he become a member of it only if he is approved and absorbed into it - as argued by Sri Is war Sahay ?

16. Sri Dar, who contends for the first alternative, relies generally on the concept of adoption as a second birth of the adoptee in the adoptive family, and, in particular, on the wide language of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 which runs as follows :

"12. Effects of adoption: An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that:-

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- (b) any property which vested in the adopted child before the adoption shall

continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

17. Sri Ishwar Sahay, learned counsel for the respondent, contended to the contrary. He relied strongly on a decision of Rangarajan J. in *Mrs. Urmila Ginda v. Union of India*, In that case, the petitioner, a lady born in a high caste family of Punjab (the Malhotras) married in 1969 a gentleman belonging to the "Adharm" community which was a S.C. and the question at issue was whether she was entitled to be considered for a public office reserved for S.C. for which she contested in 1972. The learned Judge pointed out that the Hindu Marriage Act having abolished all caste distinctions in regard to marriage, the petitioner became a sapinda of her husband, who belonged to a S.C. by virtue of her marriage but nevertheless answered the above question in the negative. Horo's case (supra) was distinguished as having been rendered in the context of allowing representation to a Scheduled Tribe on the basis of the tribe having accepted one in its fold. As Article 340 of the Constitution, employed the words "tribal communities" in addition to 'tribes', the Supreme Court gave it a liberal interpretation. But, the learned Judge observed, the Hindu theories of the wife becoming one with her husband, of being his sapinda and of being treated as his surviving half on his death, were based on spiritual, not secular considerations, and could not be extended for secular purposes also. In view of Article 15 of the Constitution, the State would not be competent to make any reservation at all in respect of backward classes, Scheduled Castes and Scheduled Tribes except to the extent permitted i.e., for helping social and educational advancement of the members of such classes, castes and tribes and such a reservation cannot be construed so as to enable a member of a higher caste to compete with such handicapped persons and take advantage of any such reservation as it might even defeat and nullify the provision made by the State.

18. Learned counsel also strongly relied on the following observations of the Supreme Court in Arumugham's case (supra) at p. 949 :

"It is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalist outlook and status-oriented approach which attaches

social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favored 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 disabilities are inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognized 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."

Learned counsel contended that the same considerations should prevail in the present case also and that the petitioner should not be allowed to have the benefit of reservations intended for backward people.

19. It appears to me that the answer to the question depends on the legal effect of an adoption and that the fact that the transaction of adoption took place on the eve of the petitioner seeking a Government employment and perhaps with a view to obtain "S.C. status" is immaterial. In Mohan Rao's case (supra) the motive for reconversion was ignored. For the purposes of the present argument, we have to proceed on the basis that the adoption is a valid and genuine one and, if so, the question of motive for the conversion is of no consequence. The worst that can be said is that, borrowing a leaf from the "tax-planner", notebook in regard to the permissible, if not exactly laudable, permissible of taking advantage of a loophole in the law, the petitioner has done a bit of "career-planning". Since it is lawful, if it has the legal effect for which he contends it has to be given effect to and it is not permissible to refuse to give the legal effect because the course was adopted by the petitioner in order to obtain a post in Government service.

20. Having given the matter my anxious and careful consideration, I have come to the conclusion that the petitioner's contention that, on adoption he became a

member of the caste to which his adoptive parents belong has to be accepted. I think that the decisions regarding the effect of marriage have no relevance in the present context. As pointed out by Rangarajan J. the effect of marriage under the Hindu Law was decided on spiritual and not secular considerations. There is no ground for assuming or asserting that on marriage the wife becomes automatically a member of the caste to which the husband belongs. Prior to the Hindu Marriage Act inter-caste marriages were valid only to some extent and where they took place, a change of caste became effective only when the members of the husband's community or caste received the bride into the fold. The Hindu Marriage Act does not make any specific statutory provision in this regard although it has validated all inter-caste marriages. This was only natural for, as mentioned already one of the objects of the Hindu Code, was to abolish all caste distinctions and one can hardly expect to find in such a Code a provision as to the effect of marriage on caste. That analogy in my opinion is of no help.

21. On adoption, however, the position seems to be quite clear and explicit. Under the old Hindu Law an adoption to a sonless parent was for all purposes equivalent to the birth of a son directly to him. The question of caste however did not assume any importance because adoption was permitted only between the members of the same caste. The Hindu Adoptions and Maintenance Act makes a specific provision in Section 12 regarding the effect of adoption. The language of the Section is quite clear, explicit and emphatic. The adoptee child, it says, (a) is deemed to be the child of the adoptive father for all purposes; and (b) all the ties of the child in the natural family shall be deemed to be severed and replaced by those of the adoptive family. The emphatic repetition of the word 'all' in relation to the 'purposes' and 'ties' is significant. The word 'ties' is a very wide and comprehensive word and would include all types of bonds, social, religious, cultural or any other that bound the adoptee to his natural family. All his relationships are, according to the mandate of the Section, replaced by the corresponding ties in relation to the adoptive family. It is very difficult to see why the tie of caste which indeed was and perhaps still is a very strong tie that binds a Hindu should be said to be outside the purview of this provision. Besides the Section enacts a statutory fiction and this statutory fiction should be given effect to. The principle has been laid down and too frequently applied by the Supreme Court and other High Courts in this country to need detailed repetition. It is sufficient to quote a passage from Mulla's Hindu Law

(10th Edn.), page 1008, from the Commentary on Section 12 of the Adoptions Act: "where statute enacts that something shall be deemed to exist or to have happened or some status shall be deemed to have been lost or acquired on the happening of something which would not otherwise have been so, effect must be given to the statutory fiction and it must also be carried to its logical conclusion. In such cases full effect must be given to the putative state of affairs and the status deemed to have been acquired or lost as also to all a inevitable corollaries of the state of affairs and altered status, unless there is something in the statute which prohibits the legal fiction being applied with all its inevitable corollaries and with the consequences and incidents of the state of affairs and status deemed to have come into existence", I am therefore of opinion that as a result of the above provision the adoptee is to be treated from the date of his adoption as if he were born in the adoptive family for all practical purposes. From that date we have to forget that he belonged to another family except for the three purposes mentioned in the Section itself There is therefore substance in the contention urged for the petitioner that, on adoption as in the case of a birth, the adoptee acquires the caste of the adoptive parents without anything more to be done by him or by others.

22. It appears from the above discussion that the principles applied in the decisions earlier referred to which require the consensus or acceptance by the community before a person could be admitted as a member of the caste are not applicable here. Here the adoptee becomes a member of the caste by reason of his status as an adopted son and not as an outsider seeking admittance depending upon the sweet will and pleasure of the other members of the community. That rule can only apply where admission is sought and has to be granted in accordance with the customary rules, where the aspirant has no statutory sanction or birth right in his favor. Just as it is not open to a caste to refuse to recognize a new-born in the family of one of its members as belonging to the caste, it is not open to the caste to sit in judgment over the statutory status enjoyed by the adoptee. It appears clear that to impose any such restrictions could be to go contrary to the mandate of the statute. I am therefore unable to accept Sri Ishwar Sahai's contention that even an adoptee has to await the sanction of the adoptive community before he can be treated as a member thereof.

23. The argument of Sri Ishwar Sahai based on the constitutional provisions and

their object did impress me considerably. From that point of view, there is a resemblance between the case decided by Rangarajan J. and the present case. I was also hesitant to hold that a person in the position of the petitioner who neither needs nor deserves any special treatment would be entitled to the special concessions available to a S.C. by way of reservations in public employment. On second thoughts, however, it appears to me that the issue should be decided by looking not merely at the impact of the adoption on him but also on its effect on the future generations - the children and grandchildren that may be born to the adoptee. In the first place it has to be remembered that even in the present advanced state of Hindu society, it requires a person of great courage and broad wisdom to seek conversion from one of the 'higher' castes to a Scheduled Caste even for such a gainful purpose as obtaining an employment : (again I am assuming for the purposes of this argument that there is a valid adoption). So if a person of a forward community is prepared to go to the extent of merging himself with a family in a Scheduled Caste then why should there be any hesitation in recognizing him as a member of that latter caste ? Secondly what would be the position of the adoptee's son? Can it still be said that because the father is held to belong to a higher caste, the son should also be denied the privilege of a Scheduled Caste person. To how many generations can this principle be carried? The concept contended for by the learned counsel for the respondent will raise several conundrums which would be difficult of solution. Thirdly, the process of adoption is a two-way process. Though we are concerned with an adoption from a non-Scheduled Caste to a Scheduled Caste the same question can also arise for other purposes in regard to an adoption the other way. If a member of a S.C. were to be adopted into a family of a higher caste, why should he still be treated as a person of the S.C. when the congenital handicaps have been removed by the patronage of the affluent caste? Even if it is justified in his case, why the benefit of such treatment should be accorded to generations that might follow merely because he was once a Scheduled Caste. Finally, it is a well known fact that the inter-mingling of castes and removal of the wide disparities between the forward classes and the backward classes of society is an objective of top priority in India today. The Govts in many States, offer special inducements and rewards for cases of such inter-caste marriages and encouragement should be given to attempts at mutual integration whether by marriage or adoption. There could be adoptions in the other direction as well and also adoptions with the more laudable object of promoting social harmony. I

therefore think that the formula: "Once a Scheduled Caste, always a Scheduled Caste" contended for by the learned counsel for the respondent should not receive acceptance. In the long run it may be found that the principle contended for by the petitioner in the present case may not be really opposed to the object and scheme of the Constitution in regard reservations for Scheduled Castes and Tribes. On the other hand if genuine adoptions both ways, become frequent, they may eventually lead to the development of that social equality at which the Constitution aims. I, therefore, hold that the certificate granted to the petitioner was not liable to be cancelled on the ground that the petitioner's claim to be a Scheduled Caste by adoption was unsustainable. I would like to add that the instructions issued by the Government of India on this subject (contained in a brochure published by the Government and produced by Sri Dhar) also proceed on the above basis and emphasize consequently the necessity for a very careful scrutiny of the genuineness of any claims of adoption that may be put forward.

24. As I have already pointed out, the only question which survives for consideration is as to whether the adoption was rightly held to be invalid under the Act and for that reason the certificate is liable to be cancelled. In this respect, the only provision to which reference was made by the counsel for the respondent was Section 10 of the Act which provides that a person to be taken in adoption should not normally have completed the age of 15 years. This rule however is relaxable where there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption. In other words, it is not sufficient for the respondents merely to say that the petitioner was above 21 years old when he was adopted; they must further point out that this adoption was not permitted by custom. No doubt the onus of proving such custom would be on the persons pleading the adoption but in the present case the adoption originally having been accepted as the basis for the grant of the certificate it is necessary, in the interests of natural justice, that before the certificate is cancelled the petitioner should be given an opportunity to prove that the adoption was valid in spite of his being more than 15 years old at the relevant time. No such opportunity was given and therefore the conclusion that the adoption is invalid because of the said provision of the Adoption Act cannot be upheld.

25. For the above reasons, I direct the issue of a writ of *certiorari* quashing the order passed by the D.C. on 5-4-1976 cancelling the certificate granted on 26-

12-1970.

26. I express no opinion on the other contentions that have been raised before me as it is unnecessary to do so in view of my above conclusion.

27. The writ petition is allowed but there will be no order as to costs.

MMM Petition allowed.

Cases Referred.

1. AIR 1976 Supreme Court 939
2. (1902) ILR 26 Bombay 174 :
3. AIR 1972 Supreme Court 1840,
4. (ILR (1940) Mad 653),
5. AIR 1976 Supreme Court 1904.
6. AIR 1975 Delhi 115.