

MYSORE HIGH COURT

B. Shyamsunder

Vs

Shankar Deo Vedalankar

Misc. Appeal No. 37 of 1959

(A.R. Somnath Iyer and A. Narayana Pai, JJ.)

14.07.1959

JUDGMENT

A.R. Somnath iyer, J.

1. This appeal presented under the provisions of Section 116-A of the Representation of the People Act, concerns an election to the House of the People from the Gulbarga Parliamentary Double Membership Constituency to fill a reserved seat. This election was held in March, 1957. Respondent 1 and the appellant were the two candidates for that reserved seat. Respondent one was declared to have been duly elected, whereupon the petitioner presented an election petition under the provisions of Section 80 of the Representation of the People Act, calling in question the validity of the election of respondent 1. That election petition was heard by an Election Tribunal appointed for that purpose. The Tribunal dismissed the election petition and the appellant appeals to this Court from that decision.

2. Respondent one was by birth a Hindu and belonged to a caste known as the Samgar Caste. This caste was specified as a scheduled caste by the President by an order made under Article 341 of the Constitution, which was called the Constitution (Scheduled Castes) Order, 1950, as modified by another order made under the provisions of Section 41 of the States Reorganisation Act, 1956, called the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956.

3. In the nomination paper presented by respondent one to the Returning Officer, he described himself as belonging to the Samgar Caste and the appellant's objection to the validity of that nomination paper was overruled by the Returning Officer.

4. In the election petition presented by the appellant, many grounds were urged in its support. But, during the trial of the election, the restricted attack made on the validity of the election of respondent one was, that respondent one, when he stood as a candidate for the reserved seat in question, did not belong to a scheduled caste and was therefore ineligible to stand as such candidate. The ground urged was that the respondent had become a member of the Arya Samaj organisation and had, therefore ceased to be a Hindu and a member of the Samgar Caste.

5. The finding of the Tribunal in effect, was that, on the date on which respondent one presented

his nomination paper, he was an Arya Samajist by creed, belief and profession. But, it recorded a further finding that by reason of his having been an Arya Samajist in that way, he did not cease to be a member of the Samgar caste in which he was born.

6. In support of the appeal presented to this Court, two contentions are urged on behalf of the appellant. The first contention is that respondent 1 by reason of his having become a member of the Arya Samaj in the year 1949 and by reason of his having continued to be such member until the date on which respondent 1 presented his nomination paper, respondent 1 had ceased to be a Hindu and was, therefore, a person who professed a religion different from Hinduism. It was therefore contended before us that, as provided by paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, he could not be deemed to be a member of a Scheduled Caste. The second contention urged before us is that even if we come to the conclusion that respondent 1 cannot be regarded to profess a religion different from Hinduism merely by reason of his having become a member of the Arya Samaj, we should still hold that his profession of Arya Samajism entailed a deprivation of caste and that respondent 1 ceased to belong to the Samgar caste after he became a member of that organization.

7. Article 330 of the Constitution provides that seats shall be reserved in the House of the People for the scheduled castes. Paragraph 2 of the Constitution (Scheduled Castes) Order, 1950, provides among other matters, that subject to the provisions of that order, the castes specified in Parts 1 to XVI of that order shall be deemed to be scheduled castes. Paragraph 3 of that order provides that, notwithstanding anything contained in paragraph 2 referred to above, no person who professes a religion different from Hinduism shall be deemed to be a member of a Scheduled Caste.

8. It is undisputed that the Samgar caste is a caste which is specified in Part VIII of Schedule 1 to the Constitution (Scheduled Castes) Order, 1950, as modified by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956. There can, therefore, be no doubt, and it is not disputed, that the Samgar caste is a scheduled caste within the meaning of that expression occurring in Article 330 of the Constitution.

9. That being the position, it is only if respondent 1 can be said to profess a religion different from Hinduism by reason of his having entered the Arya Samaj fold or no longer retained the Samgar caste, in which he was born, it could be held that he was not a member of a scheduled caste on the date of the presentation of his nomination paper in connection with the election which is now disputed.

10. As I have mentioned above, the finding of the Tribunal was that although respondent 1 was a member of the Arya Samaj at the relevant time, he had neither ceased to be a Hindu nor lost his Samgar caste in which he was born.

11. The latter part of this finding recorded by the Tribunal is assailed on behalf of the appellant before us while the former part of it is assailed by respondent 1 who has attempted to support the decision of the Tribunal also on the ground that the first part of the finding referred to above is incorrect.

12. It would now be necessary to refer briefly to certain undisputed facts. It is common ground that in the year 1942, respondent 1 entered an Arya Samaj educational institution called the

Gurukul University, Kangri, Haridwar. He continued the study of the Vedas and the Upanishads in that institution till the year 1949 when a degree known as Vedalankar was conferred on him. Between the years 1949 and 1950, he was a student of a college, conducted by the Arya Samaj organisation known as the D. A. V. College, Kanpur. In that institution, he took the degree of Master of Arts in Philosophy. In the year 1951, he went to the State of Hyderabad, to which he belonged, and worked as a Pracharak in an Arya Samaj institution known as the Arya Pratinidhi Sabha, Hyderabad, for six months. In December, 1951, during the first general elections held for the Legislative Assembly of the erstwhile State of Hyderabad, he stood as a candidate for that body to a reserved seat. He claimed to belong, on that occasion, to the Samgar caste, and therefore, to a scheduled caste. He succeeded in that election and in the year 1952, he was appointed as one of the ministers of the then Hyderabad Government, and it is stated by respondent 1 that he was appointed as such minister on behalf of the Harijan Community to which respondent one states he continued to belong at that time.

13. On September 26, 1953 as disclosed by Exhibit P-12, which is an extract from the proceedings of a committee known as the Antarang Sabha of the Sultan Bazar branch of the Arya Samaj, it was decided by that Antarang Sabha, that a suggestion coming from some one, that respondent 1 should be admitted as a member of the Arya Samaj organisation should be accepted. Although there is evidence in this case given by the appellant's witnesses that, in order that a person may become a member of the Arya Samaj, he should, in accordance with the rules prescribed in that regard, make an application for such admission, it does not appear that respondent 1 made any such application as required by those rules.

14. But, it is clear from Exhibit P-13 which is a document produced by P. W. 11 who was, when he gave evidence, a Pradhan of the Sultan Bazar Branch of the Arya Samaj, Hyderabad, that respondent 1 paid his membership subscription in regard to that organisation for the period of fifteen months between April 1956 and June 1957. It is not disputed by respondent 1 that he paid this subscription. Exhibit P-13 bears the date June 18, 1957, and respondent 1 admits before us that he paid the subscription referred to in that document.

15. On behalf of the appellant, it is also pointed out that Exhibit P-3 which is the 13th Annual Report of the Arya Pratinidhi Sabha of the State of Hyderabad discloses that during the year 1943-44, one Pandit Shankar Deo Udgir was a member of the Arya Samaj and did considerable work in many spheres of the Arya Samaj organisation. This, according to the appellant discloses that respondent 1 was an Arya Samajist even in the year 1943-44. But it does not appear to me that much reliance can be placed on that document for the reason that even according to the appellant's contention, respondent one become an Arya Samajist only in the year 1949. Further, the person referred to in Exhibit P-3 is one Shankar Deo Udgir whereas the name of respondent 1 before us is merely Shankar Deo.

16. Reliance is next placed on behalf of the appellant on Exhibit P-4 which is a printed list of the distinguished Aryas in the State of Hyderabad in which, the name of respondent 1 is also contained. It does not appear to me that this document is of any help to the appellant since it is not stated in that document that respondent 1 was an Arya Samajist. All that document states is that he was one of the distinguished Aryas and the evidence given by the appellant's witnesses themselves is that an Arya is not necessarily an Arya Samajist.

17. Exhibit P-5 is the next document from which it is urged that we should infer that respondent 1 was an Arya Samajist in the year 1949. Here again, as in the case of Exhibit P-3, the reference is one to Pandit Shankar Deo who is said to have performed one 'Shuddhi' and twenty 'Samskars' but it is not very clear that the reference in that document can be regarded to be to respondent one.

18. Exhibit P-1 is the next document which is an article, the title of which is: "The Contribution of Arya Samaj to the struggle for Freedom". In the course of that article, it is stated that respondent 1 was one of those Arya Samajists who were elected in the year 1951-52 General Elections.

19. Exhibit P-7 is a Hindi book published in the year 1954 by one Tulsiram Kawle to which respondent 1 has admittedly written a foreword. I do not think there is anything in Exhibit P-7 from which we can infer that by reason of writing that foreword respondent 1 had become a member of the Arya Samaj in the year 1954.

20. But, it seems to me that Exhibit P-13 makes it very clear that during the period between April 1956 and June 1957, respondent 1 was undoubtedly a member of the Arya Samaj of the Sultan Bazar Branch of the Arya Prathinidhi Sabha of the State of Hyderabad. Respondent 1 has strenuously contended before us that all that document evidences is that he paid subscriptions to the Arya Samaj organisation out of altruistic motives since he was, at that period, a minister of the Hyderabad State. But, it is, I think, impossible to read Exhibit P-13 in that way. Exhibit P-12 which is a record of the proceedings of the Antharanga Sabha of the Sultan Bazar Arya Samaj Organization conducted on September 26, 1953, makes it very clear that respondent 1 was proposed by some one for admission to the Arya Samaj organization. That proposal was accepted by that Sabha and if, thereafter, it is found that for the period between April 1956 and June 1957, respondent 1 paid his membership subscription to that organization, it becomes clear that sometime after September 26, 1953, respondent 1 became a member of the Arya Samaj and there is no evidence in this case that after June 1957, which is the date up to which in Exhibit P-13, respondent 1 paid his subscription, he ceased to be a member of the organization either by resignation or otherwise. The proper conclusion to be drawn from the above materials, therefore, is that on January 28, 1957, on which date respondent 1 presented his nomination paper in regard to the election now in dispute, he was a member of the Sultan Bazar Branch of the Arya Prathinidhi Sabha of the State of Hyderabad. This conclusion is, in my opinion justified by the fact that when R. W. 2 Pandit Narenderji, who is the President of the Antaranga Sabha, was examined as a witness by respondent 1 he did not ask him to produce any other record of that organization which established that after the decision of the Antaranga Sabha recorded in Exhibit P-12, and notwithstanding the payment of the subscription by respondent 1 as recorded in Exhibit P-13, respondent 1 did not nevertheless become a member of that organization. In my opinion, the finding of the Tribunal that respondent 1 was a member of the Arya Samaj when he presented his nomination paper has to be affirmed and it is only to that extent that it should be affirmed, although, it has to be pointed out that its finding in the extended form in which it has been recorded, namely, that respondent 1 was by creed, belief and profession an Arya Samajist does not appear to be justified by the evidence in the case.

21. The next question that arises is whether by reason of respondent 1 having become a member of the Arya Samaj, in that way, he could be regarded to have professed a religion different from

Hinduism. If he could be said to have done that, there can be no doubt that, as provided by Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, he could not be deemed to be a member of a Scheduled Caste.

22. The contention urged by Mr. Reddy, appearing on behalf of the appellant, although with some considerable diffidence, was that the Arya Samaj is a religion distinct from Hinduism. Mr. Reddy urged that the Arya Samaj is an organization which repudiates the determination of caste by birth as it does idolatry.

23. It must be said that it is so, but what is of importance is that the Arya Samaj believes in the supremacy of the Vedas. It is undisputed that Pandit Dayanand Saraswathi who was the founder of the Arya Samaj organization was himself a Hindu who never abjured his ancestral religion. He was only a reformer who attempted to restore the Hindu religion to its original purity but in that attempt he never attempted to weaken or undermine the foundations of that religion.

24. This, is also the evidence given by P. W. 2 Venkata Swamy who is the joint secretary of the Arya Pratinidhi Sabha of the State of Hyderabad. This is what he stated :

'Arya Samaj is only an organisation. Swamy Dayanand did not establish any new religion but he made the people realise what they had forgotten about their religion'.

R. W. 2 Pandit Narenderji and R. W. 4 Hazarilal Rohatgi, who is the Principal of the D. A. V. College, Kanpur, also gave similar evidence.

25. It is therefore plain that Arya Samaj, unlike Christianity or Islam, is not a new religion entirely distinct from Hinduism and that the mere profession of Arya Samajism by a person does not make him cease to be a Hindu and cannot have the effect of excluding him from Hinduism although he was born in it. It is equally clear that such a person never becomes separated from the religious communion in which he was born. The contention urged to the contrary by Mr. Reddy must, therefore, fail.

26. That being the position, Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, cannot be of any help to the appellant in this case.

27. The next and the more serious contention urged on behalf of the appellant is that respondent 1 by becoming an Arya Samajist, ceased to retain the Samgar Caste in which he was born. It is urged that since the refutation of the birthwise classification of castes is one of the cardinal articles of the Arya Samaj faith, one who is a member of that organization can no longer be considered to belong to the caste in which he was born. The argument, therefore, was that the moment respondent 1 became a member of the Arya Samaj, he ceased to be a person belonging to the Samgar caste and if that was so, he could not have properly stood as a candidate to the reserved seat, as a Samgar.

28. In support of this contention, reliance was placed by Mr. Reddy on the evidence of four witnesses who were examined on behalf of the appellant, P. W. 2, P. W. 4, P. W. 7 and P. W. 11. P. W. 2 Venkata Swamy is the Joint Secretary of the Arya Pratinidhi Sabha. P. W. 4 Gopdeo Shastry is one of the Preachers in that Organization. P. W. 7 Manik Rao Shastry is another Arya Samajist

and P. W. II Surya Pratap is the Pradhan of the Sultan Bazar Branch of the Arya Samaj Pratinidhi Sabha. All these witnesses have given evidence that an Arya Samajist does not believe in caste and that once a person becomes an Arya Samajist, he loses the caste in which he was born.

29. Three witnesses were examined by respondent 1 in support of his contention that an Arya Samajist retains the caste in which he was born even after he became an Arya Samajist. R. W. 2 Pandit Narenderji. the President of the Antarang Sabha, R. W. 3 Pandit Indra Vidyawachaspati, the Vice-Chancellor of the Gurukul at Kangri, and R. W. 4 Hazarilal Rahatgi, the Principal of the Dayanand Anglo-Vedic College, Kanpur, are these three witnesses. Their evidence is that a person by becoming an Arya Samajist does not lose his caste and that he retains the caste in which he was born.

30. P. Ws. 2 and 7 have given evidence that if an Arya Samajist says that he belongs to a particular caste even after he became an Arya Samajist, he ceases to be an Arya Samajist whereas P. W. 11 has given evidence that if one, even after becoming an Arya Samajist, declares that he belongs to any particular caste, he does not cease to be an Arya Samajist merely by reason thereof, but continues to be one until removed in accordance with the rules of the Arya Samaj, which, however, have not been produced by any of the parties in this case.

31. It is, I think, extremely difficult to base our decision on the question that arises for determination in this case merely on the opinions given by these witnesses examined by the parties. As pointed out by the Supreme Court in *Chaturbhuj Vithaldas Jasani v. Moreshwar Parasharam*¹, we are not in deciding this case, really concerned with the theology of the Arya Samaj, as propounded by the witnesses referred to above. What we are really concerned with is the determination of the social and political consequences of a conversion, if it can be said that a conversion takes place when a person born in a particular caste becomes an Arya Samajist. As further pointed out by

¹ AIR 1954 SC 236

their Lordships of the Supreme Court, the question must be decided in a commonsense practical way rather than on theoretical and theocratic grounds.

32. We are in this case, concerned with the social and political consequences of respondent 1 having become a member of the Arya Samaj although he was born in the Samgar caste. It seems to me that, in a case like this, the true position is that if a person is born in particular caste, there cannot, in the absence of intentional abandonment or renunciation of that caste by that person, or expulsion or ex-communication by persons belonging to the caste in which he was born, be any deprivation or loss of caste. The three factors to be considered in order to decide whether there was such loss or deprivation of caste in so far as it involves deprivation of the political and social rights of a person who becomes a proselyte by his getting into the Arya Samaj fold are those which have been laid down by the Supreme Court in the decision to which I have referred. On page 244, of that report, this is what Bose, J., said:

"Conversion brings many complexities in its train, for it imports a complex composite composed of many ingredients. Religious beliefs, spiritual experience and emotion and intellectual conviction mingle with more material considerations such as severance of family and social ties and the casting off or retention of old customs and observances.

Looked at from the secular point of view, there are three factors which have to be considered: (1) the reactions of the old body; (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or excommunicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider, the legal and political rights of the old body the views of the new faith hardly matter. The new body is free to ostracize and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favors from the new as opposed to purely spiritual advantage.

On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order".

33. Now, in this case, there is no evidence that respondent 1 was either ostracized or banished from his caste by those belonging to the old order who are still in it. It is not the case of the appellant that respondent 1 lost his caste in that way.

34. An attempt was made on the basis of the evidence given by P. Ws. 5 and 6 to show that when respondent 1 was elected to the Hyderabad Legislative Assembly in the year 1951, the Harijan Community was generally dissatisfied with some of his activities after such election. P. W. 5 Sri Ramaswamy is a person who was elected to the House of the People in the year 1950 and he gave evidence that the Harijans of the Hyderabad State did not acknowledge respondent 1 as one of themselves. He added that the reason for that was that respondent 1 had been supported by the Arya Samajists and was made to stand on behalf of the Arya Samajists. In his cross-examination, he admitted that in the General Elections which were held in the year 1951-52 to the Legislative Assembly of the Hyderabad State, respondent 1 was elected for a seat which had been reserved for the scheduled castes. He also admitted that he did not know the institutions of the Harijans which repudiated respondent 1 as being a person belonging to that community. P. W. 6 Ganpatrao who is a Chambhar and therefore a person belonging to a scheduled caste, gave evidence that as the attitude of respondent 1 was not satisfactory towards the untouchables, they were not satisfied with his work. He also gave evidence that the reason for such feeling was that respondent 1 was trying to win over the untouchables to Arya Samaj. In the course of his cross-examination he stated that the Harijans were dissatisfied with the personal activities of respondent 1. But, curiously enough, in the course of his cross-examination; he pretended ignorance of the fact whether respondent 1 was the President of the All India Depressed Classes League of Hyderabad and whether in the year 1953, he convened a conference of the All India Depressed Classes League at Hyderabad.

35. It is therefore seen from the evidence of these two witnesses that their evidence, besides being vague and inconclusive, cannot be regarded as acceptable. Secondly, neither P.W. 5 nor P.W. 6 is a person belonging to the caste in which respondent 1 was born. P. W. 5 is Mala whereas P. W. 6 is a Chambhar. In the absence of any evidence, which neither of these two witnesses gave, as to the kind of persons who had cause for dissatisfaction against respondent 1

by reason of some activities on his part which they did not like, it is impossible to hold that their evidence throws any light on the reactions of the old order to which respondent 1 belonged prior to his conversion, if it can be called a conversion, to the Arya Samaj faith.

36. There is thus no evidence in this case that persons belonging to the Samgar caste in which respondent 1 was born at any time disowned respondent 1 or treated him as a person who was not one of themselves.

37. It was next contended that there was some evidence in this case which demonstrated an intentional renunciation or abandonment on the part of respondent 1 of the caste in which he was born. According to Mr. Reddy who appears for the appellant, such renunciation or abandonment has also to be deduced from the mere fact that respondent 1 became an Arya Samajist and was therefore bound to repudiate the caste system based on birth.

38. It is clear that no such inference can be drawn merely from the fact that respondent 1 became an Arya Samajist. It may be that having become an Arya Samajist in that way, respondent 1 intellectually accepted some of the tenets of the Arya Samaj organisation. But the question to be decided in this case is whether there was a break by respondent 1 from the old order to which he belonged and whether that break is so complete and final that he no longer regarded himself as a member of the Samgar caste.

39. Respondent 1 has given evidence in this case that notwithstanding his having become a member of the Arya Samaj, he believes in idolatry, Geetas and Puranas, in none of which an Arya Samajist can properly have faith.

40. The appellant gave evidence that after respondent 1 became an Arya Samajist, he did not mix or go about with the scheduled caste people but was always with the Arya Samajists.

41. There is no evidence in this case that after respondent 1 became an Arya Samajist, he abjured the caste system peculiar to the Hindu religion to which he belonged by reason of his birth, nor is there any evidence in the case that he, at any time, declared himself to be a person no longer belonging to the Samgar caste. It is, I think, impossible to attach much weight to the evidence given by the appellant that respondent 1 was not mixing or having any social intercourse with the persons belonging to the scheduled castes. His evidence is obviously interested evidence.

42. On the contrary, there is a considerable volume of evidence which demonstrates the intention of respondent 1 to remain in the caste in which he was bom. The mere fact that respondent 1 joined the Gurukul at Kangri does not indicate that by so joining that institution, respondent 1 intended to abandon the Samgar caste. P. W. 4 Gop Deo Shastry, a Pracharak of the Arya Samaj in the State of Hyderabad, has given evidence that even Muslims, Harijans and Parsis were admitted to that Gurukul. R. W. 3 Pandit Indra Vidyawachaspati has given evidence that when respondent 1 joined that institution, he claimed to belong to a scheduled caste. Exhibit D-1 which, according to R. W. 3, was brought by respondent 1 and which is a letter addressed to R. W. 3 by one Tyagi on June 3, 1943, refers to respondent 1 as a Harijan.

43. Mr. Reddy has contended before us that Exhibit D-1 has not been properly proved and that any statement contained in that document cannot be regarded to have been made by Tyagi, which it purports to be.

44. But, whether Tyagi really made that statement or not, what is material for the purpose of this case is that R. W. 3's evidence is to the effect that Exhibit D-1 was brought by respondent 1 to him when he sought admission to that institution and if in that letter there is reference to respondent 1 being a Harijan, whatever else is or is not established by Exhibit D-1, there can be no doubt that when respondent one sought admission into that institution, he declared, that he belonged to the Harijan Community. It is obvious that when he so described himself, he was representing that he belonged to the Samgar caste in which he was born.

45. There is no evidence in this case that during the period of nearly seven years in which he was a student of that institution, respondent one did anything from which it could be inferred that there was a break on his part from the Samgar caste or such break was so complete that he could no longer be regarded as a person belonging thereto.

46. There is something more important than that. After he left that institution, between the years 1949 and 1951, respondent 1 was a student of the Dayanand Anglo-Vedic College. It is also an institution run by the Arya Samaj. R. W. 4 Hazarilal is the Principal of that College and he has given evidence with reference to the registers which he had maintained in that College that respondent 1 was, during the period when he was a student of that college, getting a scholarship which was granted to him by the State of Uttar Pradesh. The effect of his evidence is that scholarship is granted to a person belonging to the Harijan Community and that on the basis of a letter written by the Harijan Sahayak Officer of the State of Uttar Pradesh, on September 20, 1949, respondent 1 was granted that scholarship for the period between July 1949 and April 1951. One other fact which emerges from the evidence of R. W. 4 is that when respondent 1 was a student of that college, he went on a hunger strike for the reason that he and the other Harijan students were not allowed to mess in the hostel run by a Brahmin cook.

47. By far the most important piece of evidence which has a material bearing on this case is the fact that in the general elections which were held to the Hyderabad Legislative Assembly in the year 1951, respondent 1 was a candidate to a reserved seat. He stood as a candidate as a person belonging to the Samgar caste. There is no evidence that any one objected to his competence to stand as a candidate to that reserved seat but there is evidence that he was successful in that election.

48. Respondent 1 has given evidence that after he succeeded in that election, he was appointed as one of the ministers of that State and that in that cabinet, he represented the Scheduled castes of that State. It has, however, to be noticed that there is no evidence in regard to that matter except that given by respondent 1. It emerges from the evidence that when he was such Minister and between the years 1952 and 1956, respondent 1 was a President of the Harijan M. L. As' Association of the Hyderabad Legislative Assembly and that he was also the President of the Hyderabad Depressed Classes League, which is a branch of the All India Depressed Classes League. It is also in evidence that he was the Chairman of the Reception Committee of the All India Depressed Classes League Conference held in the year 1953.

49. The proper inference to be drawn from the above facts is that far from respondent 1 having discontinued to remain in the Samgar caste in which he was born, he still regarded himself as a person belonging to it. There is no evidence produced on behalf of the appellant that either there

was a break on his part from that caste or that such break was so complete that the only possible inference is that respondent 1 no longer regarded himself as belonging to it.

50. That being the position, the second test to be applied in order to decide the social and political consequences of respondent 1 professing the Arya Samaj faith, if applied, does not establish that there was any intentional abandonment by respondent 1 of the caste in which he was born.

51. What is next to be considered are the rules of the Arya Samaj organisation in so far as they are relevant for our present purposes. P. W. 11, the Pradhan of the Sultan Bazar Branch of the Arya Samaj has given evidence that if a person still believed in his belonging to a particular caste even after he became a member of the Arya Samaj, he is liable to be removed in accordance with the rules made in that regard.

Those rules, however, were not produced. However that may be, there is considerable evidence in the case that important office-bearers of the Arya Samaj organisation were aware of the fact that respondent 1 stood as a candidate to a reserved seat of the Hyderabad Legislative Assembly, as belonging to the Samgar caste. There is evidence, and that is also the argument addressed by Mr. Reddy to us, that respondent 1 was actively supported during those elections by the members of the Arya Samaj themselves. The position therefore was that, far from the Arya Samaj taking any steps to expel respondent 1 from the membership of the Arya Samaj organisation they not only gave their active support and assistance to respondent 1 in his election campaign but also felt quite happy that he was successful in his election. Exhibit P-1 which is a document on which reliance has been placed on behalf of the appellant shows that in that article, respondent 1 was referred to by an Arya Samajist who wrote that article, with considerable satisfaction, as one of those Arya Samajists who were elected in that election.

52. The Arya Samaj, therefore, took no steps to either outcaste or ostracize respondent 1 from its fold on the ground that he did not adhere to its tenets, one of which was that an Arya Samajist does not believe in the birth wise caste system. It is equally clear that the Arya Samaj could have hardly any right to interfere in a matter like the election of respondent 1 to the Legislative Assembly of the State of Hyderabad or to the House of the People which concerned entirely the political rights of the Samgar community in which he was born, particularly because, respondent 1 never sought or aspired for any favour from the Arya Samaj of which he became a member.

53. In my opinion, the Election Tribunal was, therefore, right in coming to the conclusion that by reason of respondent 1 having become a member of the Arya Samaj, he did not cease to belong to the Samgar caste in which he was born, and I come to that conclusion notwithstanding the fact that the evidence discloses that, in the year 1950, respondent 1 was married, according to Arya Samaj rites, to a girl belonging to a caste which is referred to as the Sonar Caste, in the course of evidence.

I am not convinced by the argument of Mr. Reddy that the fact that that marriage took place in that way established that respondent 1 did not himself at that time consider that he had retained his Samgar caste. There is no evidence to show that respondent 1 and his wife could not have married in the ordinary way if they had not married according to the Arya Samaj rites.

54. Likewise, there is no substance in the contention urged by Mr. Reddy that in the Census Report which was completed in the year 1951, respondent 1 was referred to as an Arya. As I

have already mentioned, the evidence given by the appellant's witnesses themselves, and particularly by P. Ws. 2 and 4, was that an Arya is not necessarily an Arya Samajist.

55. In my opinion, the finding of the Election Tribunal that respondent 1 was a member of the Arya Samaj on the date of the presentation of his nomination paper in connection with the disputed election has to be affirmed, although its further finding that he was an Arya Samajist by creed, belief and profession does not appear to be based upon any acceptable or trustworthy material on record. Its finding that respondent 1 continued to be a member of a Scheduled Caste when he stood for election has also to be affirmed.

56. The result is that this appeal fails and must be dismissed with costs. The sum of ₹ 500/- deposited by the appellant as required by the provisions of the Representation of the People Act, when he presented the appeal to this Court, will be paid to respondent I by way of costs.

A. Narayana Pai, J.

57. I agree.

Appeal dismissed.