BOMBAY HIGH COURT

Narayan Waktu Karwadi

Vs

Panjabrao Hukam Shambharkar

(Y Tambe, C.J. S Kotwal, J.)

21.01.1958

JUDGMENT

Y.S. Tambe, J.

1. This is an appeal by Narayan Kaktu Karwade under Section 116A of the Representation of the People Act, 1951 (No. XLIII of 1951), hereinafter referred to as the Act.

2. There was an election held on 11-3-1957 in the Nagpur constituency of the Bombay Legislative Assembly. This constituency was a double seat constituency, out of which one seat was reserved for the scheduled castes and the other seat was a general seat. For the seat reserved for the scheduled castes the present appellant, Shrimati Anasuyabai Borkar, Shrimati Nagabai Vaidya, Shri Vinayakrao Changole and the first respondent were the duly nominated candidates. Before the due date, the appellant withdrew and the contest remained between the aforesaid remaining four candidates. As regards the general seat, the nominated candidates were the second respondent, Shri Wamanrao Gawande and Shri Mancharsha Awari. Both the respondents were candidates put up by Samyukta Maharashtra Samiti. The appellant was dummy candidate put up by the Congress. Shrimati Anasuyabai Borkar was the principal candidate put up by the Congress. So far as the general seat was concerned, Shri Gawande was the candidate put up by the Congress and Shri Awari was the candidate put up by the Praja-Socialist Party. The result of the election was declared on 14-3-1957 and the first respondent was declared elected for the seat reserved for the scheduled castes and the second respondent was declared elected for the general seat. Feeling aggrieved, the appellant made a petition on 25-4-1957 under Section 81 of the Act to the Election Commission, New Delhi. The election petition was then sent for decision to the Election Tribunal, Nagpur. The Election Tribunal, Nagpur, was a one-man Tribunal presided over by Mr. T.P. Ghogle, District Judge. Nagpur. By that petition the appellant had challenged the election of both the respondents on various grounds. It is, however, not necessary to reproduce all the contentions raised in the petition as in this appeal the only contention pressed on behalf of the appellant is as regards the validity of the election of the first respondent on the ground of

improper acceptance of his nomination paper within the mean-ing of Section 100(1)(d)(i) of the Act. The facts pleaded, on which this contention is founded, in the words of the appellant, are as follows:

> "Respondent No. 1 Panjabrao s/o Hukam Shambharkar was not a person belonging to the Scheduled Caste within the meaning of the Constitution (Schedule castes) Order, 1950, as he was a person who professed religion different from the Hindu or the Sikh Religion. The respondent No. 1 Panjabrao s/o Hukam Shambharkar had embraced the Buddhist faith on or about 14-10-1956 at Nagpur and had continued to profess that religion after his conversion to that faith till the date of submission of his Nomination Paper i.e., 29-1-1957 and thereafter. 'The Respondent No. 1 Panjabrao s/o Hukam Shambharkar's embracing Buddha religion must in law amount to his professing a religion different from the Hindu or the Sikh religion and thus disentitling him to stand as a candidate for the seat reserved for the Scheduled Caste'". (Underlining there into ' ') is by us).

These allegations were denied by the first respondent. The Tribunal has found that the appellant has neither proved that the first respondent did not belong to a scheduled caste within the meaning of the Constitution (Scheduled Castes) Order, 1950, hereinafter referred to as the Order, nor has he proved that the first respondent had embraced Buddhist faith on or about 14-10-1956. These findings of the Tribunal are challenged before us.

3. Shri M.N. Phadke, learned counsel for the appellant, contends that on evidence it has been established that the first respondent had embraced Buddhist religion, a religion different from the Hindu or the Sikh religion. In the alternative, he contends that even if the evidence falls short of establishing actual conversion of the first respondent to Buddhism, it establishes that he had been at the material time declaring himself to be belonging to Buddhist religion and that was sufficient to bring the case within the third paragraph of the Order. He further contends that the learned Judge of the Tribunal has not kept this distinction in view. Reliance is placed on the observations made in *Ganeshprasad v. Damayanti*[1], and in Niranjan Das Mohan v. Mrs. Ena Mohan .

4. In our opinion, the contentions raised are without merit. Article 332 of the Constitution provides for reservation of certain seats in the Legislative Assembly of every State for scheduled castes and scheduled tribes. Clause (1) of Art. 341 provides that 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 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 that State or Union territory, as the case may be. In exercise of the powers conferred by Clause (1) of Art. 341, the President, after consultation with the Governors and Rajpramukhs of the States concerned, has made the aforesaid Order. Paragraph 2 of the Order

provides that subject to the provisions of the Order, the castes, races or tribes or parts of, or groups within castes or tribes, specified in Parts I to XIII of the Schedule to the Order shall, in relation to the States to which those Parts respectively relate, be deemed to be scheduled castes so far as re-gards members thereof resident in the localities specified in relation to them in those Parts of that Schedule. We are here concerned with the election of the first respondent, who admittedly is a resident of the City of Nagpur, which was part of the Bombay State at the material time. Part IV of the Schedule to the Order relates to the State of Bombay and Clause 3 thereof relates to the scheduled castes residing in the district of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Ohanda. Item 13 of this clause declares that a person belonging to Mahar or Mehra caste would be deemed to be a person belonging to a scheduled caste within the meaning of paragraph 2 of the Order. It is not in dispute that the first respondent belonged to Mahar caste at the time the Order was made. The contention raised by the appellant in his petition was that though the first respondent belonged to Mahar Caste, he on or about 14-10-1956, i. e., prior to the date of nomination (i. e, 29-1-1957), had, by embracing Buddhist religion, professed a religion different from the Hindu or the Sikh religion, and therefore was not a person belonging to the scheduled caste by virtue of the provisions of paragraph 3 of the Order; he was therefore not qualified to be a member of the Legislative Assembly for the seat reserved for the scheduled castes inasmuch as Section 5 of the Representation of the People Act, 1951, provides that in the case of a seat reserved for the scheduled castes or for the scheduled tribes of that State, a person has to be a member of any of those castes or of those tribes, as the case may be. Paragraph 3 of the Order, on which this argument is founded, reads as follows:

> "Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a scheduled caste." What Shri Phadke contends is that to attract the provisions of this paragraph it is sufficient if it is established that the person has been declaring himself to belong to a religion different from the Hindu or the Sikh religion; it is not necessary to establish, as ft fact, that he had been converted to that religion. According to Shri Phadke, the evidence on record, at any rate, establishes this fact. The words that have to be construed are "professes a religion". No doubt, one of the shades of the meaning of the word "profess" is "to declare", but here we have not to construe the meaning of the word "profess" only but we have to construe the meaning of the phrase "professes a religion" and this has acquired a special meaning. Even the word "profess" was initially used as an open declaration of entry into a religious order. One of the meanings of the word "profess", as given in the Shorter Oxford Dictionary, Vol. II, is "to be professed, to have made one's profession of religion, to make one's profession, to take the vows of some religious order". In Chamber's Twentieth Century Dictionary, the meaning given is "to

> enter publicly into a religious state". Tomlins in his book "The Law Dictionary" says that the word "profession" was used particularly for entering into any religious order". In our judgment, the phrase "professes a religion" used in paragraph 3 of the Order is used in this sense and in order to attract the provisions of this paragraph it has to be established that the person concerned has publicly entered a religion different from the Hindu or the Sikh religion. Mere declarations falling short of this would not be sufficient.

5. In this connection, the two decisions relied on by Shri Phadke are, in our view, not of any assistance in construing the phrase "professes a religion" as used in paragraph 3 of the Order. In both those decisions the learned Judges were construing the provisions of the Special Marriage Act, 1873, as it then stood. In latter decision the question arose in this way: It was contended that though the parties to the marriage had declared that they did not belong to any religion, in fact, they were professing certain religions and their marriages were therefore void. In both those decisions it was held that the only relevant thing was what was the declaration given by the parties before the Registrar of the Marriage. The observations in the decision of the Calcutta High Court, to which reference was made, reads thus:

> "The actual declarations made by the parties, which have to be in a prescribed form and signed by them, are not now available in the Registrar's office; but we cannot believe that if there had been any such irregularity or discrepancy, as the respondent now mentions, the Registrar would have solemnised the marriage. It has, however, been argued before us on behalf of the co-respondent Lal Vani that the declaration, oven if it was in the prescribed form, was, in fact, false, since the respondent, according to her evidence at the trial, was always a Christian at heart, and yet she declared before the Registrar that she professed no religion. Even so, we do not consider that this avoids the marriage, whatever penalty she may incur for making a false declaration under Section 21 of the Act. Section 2 of the Act provides that marriages may be celebrated under the Act between persons, neither of whom "professes" the Christian or certain other specified religions, subject to four specified conditions. The wording, it must be noted is not "neither of whom belongs at heart to the Christian or other specified religion, but simply neither of whom pro-

fesses" the Christian or other specified religion. What the parties were or were not at heart is as irrelevant for the purposes of this section as it would be difficult to ascertain: the criterion is what they professed or did not profess according to their declarations made at the time. We have HO doubt that this wording of the section was deliberate. The legislature obviously did not intend that the Courts should embark upon an enquiry into the state of mind of the parties or into their secret religious beliefs in order to determine the validity of a marriage."It will be seen that the learned Judges were construing the provisions of the Special Marriage Act, Section 2 whereof

provided that the marriages under the Act may be celebrated between persons neither of whom professes the Christian or the Jewish, or the Hindu, or the Muhammadan, or the Parsi, or the Buddhist, or the Sikh or the Jaina religion. Section 10 provided that before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to the Act, and the form of declaration was that the parties concerned did not profess to any of these religions. In view of these provisions of the Act, it was held that the intention of the Legislature was that it was not open for the Courts to embark upon an enquiry into the state of minds of the parties. What they were concerned with were religions professed by the parties in the declarations made by them before the Registrar of the Marriage. Such is not a case here. In the instant case, no declaration of religion was required to be made by a candidate at the time the nomination form was filed. In our opinion, therefore the party, who wants to contend that any of the candidates for the reserved seat is professing a religion different from the Hindu or the Sikh religion at the material time, has to establish, as a fact, that he had already entered publicly a religion which was different from the Hindu or the Sikh religion.

6. Even assuming for a moment that In order to attract the provisions of paragraph 3 of the Order it is not necessary to establish the fact of actual conversion to a religion different from the Hindu or the Sikh religion but establishing mere declaration to that effect on the part of the candidate concerned is sufficient, for the purposes of the instant case it would make no difference because there is no plea raised by the appellant that the first respondent had declared himself to be a. Buddhist in any manner otherwise than by embracing Buddhist religion on or about 14-10-1956. We have already reproduced the plea raised by the appellant in this respect in extenso and the underlined portion thereof would clearly show that the only plea raised by the appellant is that embracing Buddhist religion on 14-10-1958 by the first respondent would, in law, amount to professing a religion different from the Hindu or the Sikh religion on the part of the first respondent.

7. We have, therefore, to see whether on evidence thn appellant had been able to establish the fact thst the first respondent, in fact, embraced the Buddhist religion on 14-10-1956. In this connection. Shri Phadke has placed reliance on the oral testimony of the appellant himself as P.W. 1, and the evidence of Antu Govind' Chinchakhede (P.W. 5), and the conduct of the appellant in being a member of the Reception Committee and the Propaganda Committee of the Deeksha ceremony and in being a co-editor of a weekly paper "Buddha Bharat". Shri Phadke has also placed reliance on the conduct of the first respondent in giving Deeksha of the Buddhist religion to others. We will proceed to deal with this evidence.

8. It is common ground that on 14-10-1956 in the City Of Nagpur a big function was held which

was commonly known as "Deeksha Samarambha". At this ceremony Buddh Guru Chan-dramani first administered Buddha Dharma Deeksha to late Dr. Ambedkar and Mrs. Ambed-kar and thereafter Dr. Ambedkar gave Buddha Dharma Deeksha to those who desired to be converted to Buddhism. This function was very largely attended and some of the witnesses have stated that the attendance was to the tune of 4 or 5 lakhs. A large number out of the audience took the oath administered by Dr. Ambedkar. It is also not in dispute that one of the terms of the oath administered by Dr. Ambedkar was as follows:

> "I will not recognise Brahma, Vishnu, Mahesh as my Gods. I abandon the Hindu religion and accept the Buddha religion. The old religion is harmful and hence I abandon that religion."

Shri Jaywant, learned counsel for the first respondent, frankly concedes that if on evidence it is established that the first respondent had taken this oath then he would be disqualified under paragraph 3 of the Order.

9. But Shri Jaywant contends that there is no reliable evidence to establish the fact that the first respondent had taken the aforesaid oath and we agree with the contention raised by Shri Jaywant that there is no reliable evidence in this case at all to establish this fact. The only witness who states that the first respondent had taken this oath is the appellant himself and none else. The learned Judge presiding over the Tribunal has given very good reasons for not accepting the testimony of this witness, and, in our opinion, no useful purpose will be served in going over the same ground again. Suffice it to say that even at the time the election petition was made by the appellant before the Election Commission he had not stated in the verification clause that he had any personal knowledge about the first respondent embracing Buddha religion. Further the appellant and the first respondent belong to the opposite groups and are on inimical terras. The appellant's evidence, therefore, in our view, was rightly rejected by the learned Judge of the Tribunal. The learned Judge of the Tribunal has assumed that Antu Govind Chinchkhede (P.W. 5) has also deposed to the said fact, namely talking the aforesaid oath by the respondent No. 1. But when his testimony is closely scrutinized we do not find any statement made by him to this effect. What he has deposed Is that at the ceremony Dr. Ambedkar got up and said that those who wanted to take Deeksha should stand and those who did not so wish should remain sitting, and after that some people remained sitting while some stood up; then Dr. Ambedkar administered the oath; the oath was "I do not regard Bramha, Vishnu, Mahesh as Gods. I shall not accept Hinduism. I shall not accept the incarnation of Lord Buddha. I embraced Buddhism and I am now reborn";

When Dr. Ambedkar uttered this oath, other people merely repeated that oath after Dr. Ambedkar. He further says that the first respondent was standing while Dr. Ambedkar was

administering the aforesaid oath and at that time he was at a distance of 10 or 12 cubits from the first respondent. This witness has nowhere stated that he had heard the first respondent taking the aforesaid oath. In our view, his evidence, which only amounts to this, is that Dr. Ambedkar had asked the people that those, who wanted to get themselves converted to Buddhism, should stand up; then he administered the oath and some people repeated the same; the first respondent was one of them who was standing up. But that is not sufficient to establish the fact that the first respondent actually took an oath embracing Buddhism after renouncing Hindu religion. This evidence, therefore, in our view, hardly corroborates the testimony of the appellant. Shri Phadke also has laid some stress on the fact that one of the registers in which the names of the persons who were converted to Buddhism were entered was not produced in Court. He in this connection referred us to the evidence of Waman Motiram Godbole (P.W. 3). He is a General Secretary of Bhartiya Buddha Mahasabha and it appears that he had in his possession registers in which the names of the people who were convert-ed to Buddhism were entered. According to this witness, there were 36 registers of this type. He was called upon to produce these registers in Court. He. however, produced in Court only 35. Shri Phadke contends that the register, which was suppressed by this witness must have contained the name of the first respondent and therefore it was being suppressed by him and therefore an adverse inference should be drawn against the first respondent and it be held that he was converted to Buddhism after taking the aforesaid oath. It is not possible for us to accept these contentions. The witness has given explanation about the loss of this register. He has further deposed that in that register there was no entry about the name of the first respondent. This explanation has been accepted by the learned Judge of the Tribunal. The evidence further shows that there was not much love lost between him and the first respondent and there does not appear to be any special motive on his part to keep back that register. Apart from this, even, assuming that this witness is withholding the evidence, no adverse inference could be drawn against the first respondent on this ground. Illustration (g) to Section 114 of the Evidence Act reads as follows:"The Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it." It has not been shown that the first respondent is withholding this evidence or had any concern in doing away or suppressing the register.

10. The next thing to be considered is the alleged conduct of the first respondent. The evidence, no doubt, is sufficient to hold that the first respondent was a member of the Reception Committee and the Propaganda Committee of the aforesaid Deeksha ceremony and was also a co-editor of the 'Bouddha Bharat' since January 1957. This only shows that he was in Sympathy with the movement, but it is not sufficient to hold that he himself was ready to renounce Hindu religion and embrace Buddhism at that particular time. The other piece of conduct on which reliance is placed was giving Deeksha by the first respondent to others and converting them to

Buddhism. The evidence which is led in this respect relates to the period subsequent to 14-3-1957 i.e., after the result of the election was declared and has no relevance to the issue to be decided in this case. As regards the aforesaid conduct of the first respondent, the learned Judge of the Tribunal has observed as follows:

"For all the above reasons I hold that it was a well-calculated step taken by respondent No. 1 after weighing the advantages and disadvantages of his embracing Buddhism at the present juncture of time. It was for that reason that while supporting the new movement of mass conversion in all possible ways, respondent No. 1 stopped short of taking a Deeksha himself so that be may not incur the disqualification for claiming the advantages conferred by the Constitution on the Scheduled Castes."Shri Phadke contends that these observations were not called for; the first respondent has not in the witness-box stated that he became a member of the Reception Committee or Propaganda Committee or became a co-editor of the 'Buddha Bharat' with this view; and when the first respondent has not said so in his deposition it was not open to the learned Judge of the Tribunal to so conjecture. These contentions have no force. The learned Judge was asked to draw art inference from the aforesaid conduct of the respondent No. 1 that the respondent No. 1 had, in fact, embraced Buddhist religion after renouncing the Hindu religion and the aforesaid observations are the reasons given by the learned Judge for not drawing this inference, and, in our opinion, this possibility cannot be also excluded.

11. Under Art. 330 of the Constitution a valuable right has been conferred on persons belonging to the castes and tribes which are declar-ed by the President as Scheduled castes and scheduled tribes either by his Order or by the Act of Parliament and to take away that right very satisfactory evidence establishing facts contemplated by paragraph 3 of the Order must be tendered; the evidence tendered in this case is not at all sufficient for that purpose. We therefore affirm the aforesaid findings of the Tribunal.

12. In the result, in our judgment, this appeal fails and is dismissed with costs.

13. Appeal dismissed.

Cases Referred.

1ILR 1946 Nag 1 at p. 9: (AIR 1946 Nag 60 at p. 63) (SB) (A)