

(2009) 2 CTC 405

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1322 of 2009 and M.P. (MD) No. 1 of 2009

P. Rathinam

APPELLANT

Vs

State of Tamil Nadu
and Others

RESPONDENT

Date of Decision: March 6, 2009

Acts Referred:

- Constitution of India, 1950 - Article 17
- Scheduled Castes And Scheduled Tribes Orders (Amendment) Act, 2002 - Section 3(1)(xiv), 4

Citation: (2009) 2 CTC 405

Hon'ble Judges: P.K. Misra, J; M. Jaichandren, J

Bench: Division Bench

Advocate: P. Rathinam, Party in Person, for the Appellant; K. Balasubramanian, Additional Government Pleader for Respondent Nos. 1 to 7, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Misra, J.

Heard the petitioner in person and Mr. K. Balasubramanian, the learned Additional Government Pleader for respondent Nos. 1 to 7. There is no appearance on behalf of the 8th respondent. This Petition has been filed by a practising Advocate, in public interest, for issuing a Writ of Mandamus with the following directions:

(i) directing the respondents 1 to 3 to take all necessary steps to enforce the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Rules made thereunder without any delay to arrest the menace of untouchability being practised even by the public servants;

(ii) directing the first respondent to take all necessary steps to proceed against the public servants such as (1) The District Collector, Trichy District, (2) The Superintendent of

Police, Trichy District, (3) The District Revenue Officer, Trichy District, (4) The Revenue Divisional Officer, Trichy District, (5) The Tahsildar, Manapparai Taluk, Manapparai, (6) The Deputy Superintendent of Police, Manapparai Taluk, Manapparai, for their abuse of power and their deliberate violations of Article 17 of the Constitution of India and Section 3(1)(xiv) and Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and such other penal provisions of appropriate enactment;

(iii) Directing the respondents 2 to 7 to provide sufficient police protection to the scheduled caste people of Thirumalayanpatti Village during the cremation of dead bodies, in the "Cremation-cum-Graveyard" constructed under the State Governments Scheme called "Anaithu Grama Anna Marumalarchi Thittam-2008-2009" situated on the northern side of Sampatti road at Thirumalayanpatti Village, Sampatti Panchayat, Manapparai Taluk, Trichy District; and

(iv) further directing the respondents 3 and 7 to register the joint complaint submitted by the scheduled caste people of Thirumalayanpatti Village to the 7th respondent dated 23.11.2008 and representation dated 19.12.2008 submitted to the 3rd respondent i.e., the Superintendent of Police of Trichy District and to investigate the same in accordance with law.

2. The prayer itself appears to be very general and omnibus in nature. Therefore, in course of hearing, we had called upon the petitioner to specify his specific grievances. The petitioner submitted that the problem relates to use of the cremation-cum-graveyard, which was constructed under the welfare scheme of the Government of Tamil Nadu. His main grievance is that when recently a person belonging to scheduled caste community expired, the family members of such deceased person were not permitted to use the cremation-cum-graveyard because of the caste feeling prevailing in the village.

3. His further grievance is that the officers concerned, who have been cast with the duty to enforce the provisions of the Constitution as well as the Protection of Civil Rights Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, instead of taking appropriate action, turned a blind eye and the dead body was cremated in another place. According to the petitioner, such practice adopted, with the blessings of the officials concerned, would have the effect of alienating a section of the public and instead of removing such caste barriers, result in encouraging such forbidden practice in future.

4. A counter affidavit has been filed on behalf of the respondents 1 to 7. Even though the 8th respondent, the President, Sampatti Panchayat, had entered appearance through Advocate, there is no appearance on his behalf when the case was called on 05.03.2009 and, similarly, there is no appearance on his behalf when the case is posted today. No counter has been filed by the 8th respondent.

5. In the counter affidavit of respondents 1 to 7, it has been stated that in order to avoid law and order situation, a peace committee was constituted and many of the persons belonging to the scheduled caste have agreed to have a separate cremation-cum-graveyard and, therefore, it has been submitted that no specific order is required to be passed in this Writ Petition.

6. Article 17 of the Constitution of India has the laudable intention of abolishing all forms of untouchability. Article 17 of the Constitution itself declares that enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. There is no doubt that the protection of Civil Rights Act has been enacted only with the specific purpose of giving effect to the sentiments in Article 17 of the Constitution of India. In such view of the matter, there cannot be any two opinion about the fact that it is the duty of all concerned and more particularly all responsible public officials to ensure that Article 17 of the Constitution is not violated, neither in letter nor in spirit. Similarly, the provisions contained in Protection of Civil Rights Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are also required to be enforced strictly. Therefore, it is the duty of such public officials to ensure strict compliance with the provisions of the Constitution as well as the Protection of the Civil Rights Act.

7. It is no doubt true that unfortunately, even though about 60 years have elapsed after the passing of the Constitution, the practice of untouchability has not been completely abolished. The need of the hour is to educate the people so that the pernicious practice would be abolished sooner than or later and all efforts should be made to eradicate any such forbidden practice wherever it raises its ugly head directly or even indirectly.

8. In this context, it is unfortunate to notice that even after the death, there is some perception regarding segregation. A very illuminating judgment of a learned Single Judge of this Court was brought to our notice while the matter was argued and we are inclined to follow such decision wholeheartedly. As a matter of fact, in paragraph 10 of the said judgment, a very touching poem has been extracted, the basic meaning of which is "in death at least all people are equal". The laudable object of the said poem should be brought to the notice of each and every individual and no efforts should be made to create any vivisection in the society.

9. In the background of the sentiments expressed in Article 17 of the Constitution as well as in the Protection of the Civil Rights Act and in the lucid expression used in the judgment, dated 02.09.2008, in W.P. No. 3855 of 2005, we can only add that the officers could have been more pro-active in preventing any forbidden practice of untouchability. It is no doubt true that in a particular village or in a particular area there may be some apprehension of law and order situation. It is a matter for the public officials, including the Collector and Superintendent of Police to control the same. It will be the duty of all public officials concerned to ensure that no member of any particular community would be forced to go to a different place for the purpose of cremation of a dead body. Anything contrary, either directly or indirectly, would obviously be against the sentiments expressed

in Article 17 of the Constitution. With the above observations, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.