

(2009) 11 MAD CK 0108

Madras High Court

Case No: Writ Petition No. 19111 of 2008 and M.P. No's. 1 and 2 of 2008

A. Logan

APPELLANT

Vs

National Aviation Company India
Limited and The District
Vigilance Committee

RESPONDENT

Date of Decision: Nov. 19, 2009

Hon'ble Judges: Prabha Sridevan, J; M. Sathyanarayanan, J

Bench: Division Bench

Advocate: K.V. Subramanian for M.A. Abdul Wahaf, for the Appellant; N.G.R. Prasad for T.K. Srinivasamurthy, for R2 and M. Dhandapani, Spl. G.P. for R3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M. Sathyanarayanan, J.

The writ petition is filed for the relief of quashment of the order dated 13.04.2008 passed by the third Respondent under which the Scheduled Caste Certificate issued in favour of the petitioner came to be cancelled.

2. In the affidavit filed in support of the writ petition, the petitioner averred that he is a qualified driver having valid driving licence to drive all kinds of motor vehicles. Originally, the petitioner was appointed under the Non Muster Roll (NMR) category as Casual Loader-Driver in the year 1985 by the Indian Airlines Corporation. Subsequently Indian Airlines Corporation got merged with National Aviation Company India Limited-first Respondent which is owning Air India Limited. As per the policy of the Government of India, employment under NMR category and the contract labour system was abolished and the petitioner was appointed as a Driver (MT) vide order dated 27.02.2003 issued by the Indian Airlines Corporation. The petitioner was directed to produce his caste certificate showing that he belongs to the Scheduled Caste Community.

3. The petitioner made application to the Tahsildar, Mambalam-Guindy Taluk, Chennai-28, who is the jurisdiction Tahsildar, for issuance of a community certificate. After conducting a detailed enquiry and after calling for the reports from the concerned Revenue Inspector, the above said official had issued a community certificate to the petitioner in R. Dis.-D6/8881/96-646250 dated 24.5.1996 to that effect that the petitioner belonged to Hindu Adi Dravidar Community which is one of the Scheduled Caste category.

4. The petitioner satisfactorily completed his probation and his services were confirmed in the post of driver with effect from 3.9.2003 in terms of Service Regulation No. 9. The community certificate issued in favour of the petitioner was referred for verification by the Respondents 1 and 2 to the third Respondent Committee. The third Respondent Committee called upon the petitioner to appear before them along with relevant records.

5. The petitioner was born to Christian parents and he was a Christian. He converted to Hinduism and a certificate of conversion was also issued by Arya Samaj (Central) Madras on 19.11.1995 showing that he became a Hindu. According to the petitioner, the third Respondent committee has refused permission to engage a counsel of his choice or to take the assistance of a counsel and thus, he has not been given reasonable opportunity to put forth his case in an effective manner. The third Respondent has passed the impugned order dated 13.4.2008 cancelling the community certificate issued in favour of the petitioner by placing reliance upon the Government instructions which states that a person born to Christian parents has to be considered as Christian Scheduled Caste and cannot be considered as Hindu Scheduled Caste.

6. In pursuant to the order dated 13.4.2008 passed by the third Respondent cancelling the community certificate of the petitioner, second Respondent had issued a show cause notice dated 22.7.2008 calling upon the petitioner to explain as to why action should not be initiated for termination of his service. The petitioner aggrieved by the order dated 13.4.2008 passed by the third Respondent, has filed this writ petition.

7. This Court vide interim order dated 8.8.2008, has directed the Respondents not to terminate the services of the petitioner on the ground of Caste.

8. On behalf of the third Respondent, counter affidavit has been filed and it is stated that as per the orders of the Hon"ble Supreme Court of India in SLP No. 27571 of 1995 dated 25.1.1996, a person born to Christian parents, cannot get Scheduled Caste Community certificate on his conversion to Hinduism and not entitled to enjoy the benefits of reservation for Scheduled Caste. The Government based on the said judgment, in its letter RT. No. 81 Adi-Dravidar and Tribal Welfare (ADW.2) Department, dated 19.9.2000, had issued clarification that a born Christian converts to Hinduism, is not entitled to get Scheduled Caste community certificate nor can

enjoy the benefits through reservation.

9. It is further stated in the counter that the petitioner was born on 1.5.1966 to Christian parents and his parents were reported to have been converted to Hinduism only on 19.11.1995 when the petitioner was aged about 31 years and the petitioner has followed the traditions and customs of Christianity for about 31 years. The petitioner has not given any particulars with regard to the mode of his marriage i.e. whether it was solemnized in accordance with the Christian Rites or Hindu Rites. Further, the petitioner has not revealed the names of his wards and whether they are practicing Christianity or Hinduism.

10. It is also stated in the counter that the records produced by the petitioner would indicate that he belongs to Hindu Religion and he has not produced a copy of the Government Gazette to substantiate that his name and his parents name were changed on their conversion to Hinduism. The petitioner has also not filed any affidavit to the effect that on conversion to Hinduism and became Hindu Scheduled Caste he was accepted by the members of his community. Therefore, the Respondent taking into consideration the records produced by the petitioner and in terms of the above said Government letter dated 19.09.2000, came to the conclusion that the petitioner continues to practice Christianity and therefore, rightly cancelled the Scheduled Caste Community Certificate issued in his favour. On the said grounds, the third Respondent prayed for the dismissal of the writ petition.

11. The petitioner has filed reply affidavit to the counter affidavit filed by the third Respondent stating that his marriage was solemnized on 7.1.2001 as per the Hindu Custom and children born to them were given Hindu names and they were not baptized as per the custom prevalent in Christianity. The change of name of petitioner after his conversion to Hinduism was also published in Tamil Nadu Government Gazette part VI, Section 4 Volume 50 on 27.12.1995 at page No. 893 and it has also been published in Tamil Vernacular News Daily. The petitioner also place reliance upon the judgments of this Court and the Hon"ble Supreme Court of India and submitted that he is to be treated as Hindu Scheduled Caste on conversion to Hinduism and the reasons assigned by the third Respondent for cancellation of his community certificate are not proper and therefore, prayed for quashing of the said order.

12. In the additional typed set of papers the petitioner enclosed the above said Government Gazette which indicates that his father has converted to Hinduism as well as himself. He also produced other certificates to show that he has been accepted by the members of his community as Hindu Scheduled Caste. The petitioner has also produced G.O.Ms. No. 1, Adi-Dravida and Scheduled Tribe Welfare (SM-1) Department dated 2.1.2009 under which revised instructions were issued cancelling the clarifications issued in Letter No. 81, Adi-Dravidar and Tribal Welfare Department dated 19.9.2000 and the same is extracted below:

The children born to Christian Schedule Caste parents i.e., Christian by birth, converted to Hinduism, Sikhism or Buddhism at a later date and the Scheduled Caste parents embracing Hinduism, Sikhism or Buddhism converted to other religion and subsequently reconverted Hinduism, Sikhism or Buddhism, if they are accepted by their community people, the Revenue Authorities can issue Scheduled Caste community certificate to them to become eligible for the constitutional privileges conferred on the Hindu Scheduled Caste (following Hinduism, Sikhism or Buddhism) and order accordingly.

13. Heard the submissions of Mr. K.V. Subramaniam, learned senior counsel appearing for Mr. M.A. Abdul Wahaf, Mr. N.G.R. Prasad, learned senior counsel appearing for Mr. T.K. Srinivasamoorthy for the second Respondent and Mr. M. Dhandapani, learned Special Government Pleader (Writs) for the third Respondent.

14. This Court has also perused the materials available on record in the form of affidavit, counter affidavit and reply affidavit and the typed set of documents.

15. A caste is a horizontal segmental division of society spread over a District or a Region or the whole State and also some times out side it. There are essential features of the Caste System which maintain its Homo Hierarchicus character namely (a) hierarchy; (b) commonsality;) restrictions on marriage; and (d) hereditary occupation. The caste system tended to develop, as it were, group snobbery, one caste looking down upon another. Thus, there came into being social hierarchy and stratification resulting in perpetration to social and economic injustice by the so called higher castes on the lower castes. It was for this reason that it was thought necessary by the Constitution makers to accord favoured treatment to the lower castes who were at the bottom of the scale of social values and who were afflicted by social and economic disabilities. This Court in *Coopoosami Chetty v. Duraisami Chetty* reported in ILR 33 Mad. 67, pointed out that a caste is a voluntary association of persons for certain purposes and governed by their own Rules and Regulations for certain internal purposes and more a social combination than a religious group.

16. There were number of cases in which undeserved candidates occupied the posts of deserved candidates in the reserved quota meant for them by producing bogus/false community certificates. In such a situation the deserving candidate is pushed out of the queue and the constitutional guarantee reserving posts for the deserving candidate is frustrated. The Hon"ble Supreme Court of India in a decision reported in [Geeta Vs. State of M.P. and Others](#) , has deprecated such kind of practice and held that it must be stopped with a strong hand.

17. In [State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another](#) , the Hon"ble Supreme Court of India held that if and when a person takes an undue advantage of the said beneficent provision of the said Constitution by obtaining benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays fraud on the society but

in effect and substance, plays a fraud on the Constitution.

18. This Court viewing the case from the said background is to find out as to whether the petitioner who was born as Christian to Christian parents and on conversion to Hinduism, he is entitled to the benefits of Hindu Scheduled Caste Community.

19. In 44 MLW 854 : [B. Ramayya Vs. Mrs. Josephine Elizabeth and Others](#) , it has been held that normally conversion is not a principal requisite to a person becoming an Hindu. The said judgment has been subsequently considered in a judgment reported in [Goonu Durgaprasada Rao alias Pedda Babu and Another Vs. Goonu Sudarsanaswami and Others](#) , and held that "there is no authority in support of the learned District Judge's view that on account of the absence of a ceremony of reconversion or any other expiatory ceremony, the Court is bound to treat Appalaswami as having continued to remain a Christian and his marriage with Appalanarasamma as invalid".

20. In [C.M. Arumugam Vs. S. Rajgopal and Others](#) , the question came for consideration was whether on conversion to Christianity a person ceased to be a member of Adi-Dravidar Caste the Hon"ble Supreme Court held as follows:

That on reconversion to Hinduism, a person can once again become a member of the Caste in which he was born and to which he belonged before conversion to another religion, if the members of the caste accept him as a member. If a person who has embraced another religion can be converted to Hinduism, there is no rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course, the community is willing to take him within the fold. It has been further held 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 Schedule Caste to which he belonged prior to his conversion.

21. In [S. Anbalagan Vs. B. Devarajan and Others](#) , same question once again came for consideration and it has been held as follows:

Ordinarily a person who had earlier embraced another religion regains his caste, unless the community does not accept him. For reconversion to Hinduism no particular ceremony such as expiatory rites need be performed, unless the practice of the caste makes it necessary. In fact the practice of caste is so deep-rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If such a convert becomes Hindu he will revert to his original caste. This appears to be practically so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity.

No different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion.

22. In 2002(2) CTC 257 (DB) N.S. Ziauddeen v. S. Ashok Kumar, Principal Sessions Judge, following the ratio laid down by the Hon'ble Supreme Court of India in various decisions, it has been held that there is no absolute bar for a non-Hindu to convert into Hinduism and such conversion will restore old caste to which such convert to which parents belonged originally before such parents' conversion to Christianity.

23. In the unreported judgment of this Court dated 4.11.2006 in W.P. No. 29822 of 2004 R. Shankar v. The Registrar General, High Court, Madras and 2 others, the issue pertaining to the petitioner therein born as a Christian to Christian parents converted to Hinduism and became an Hindu Adi-Dravida and got selected as Civil Judge Junior Division under the said category and that selection was withheld on the ground that he is not entitled to avail such a benefit.

24. This Court after taking into consideration the various decisions of the Hon'ble Supreme Court of India including the judgment reported in [C.M. Arumugam Vs. S. Rajgopal and Others](#), , [The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao](#), and 2002(2) CTC 257 (DB) N.S. Ziauddeen v. S. Ashok Kumar, Principal Sessions Judge (cited supra) and other decisions, held that the petitioner born to Christian parents, who were originally Hindu Adi-Dravidas embraced Christianity, but later renounced Christianity and reconverted to his original community that is Hindu Adi-Dravida and his reconversion was accepted by his community people, he is entitled to get rights and benefits given to the Scheduled Caste people and therefore, he is entitled to appoint to the post of Civil Judge Junior Division.

25. In (2007) 3 MLJ 209 Prof. I. Elangovan v. State of Tamil Nadu and Anr., the vires of the Government letter Ms. No. 81, Adi-Dravidar & Tribal Welfare Department dated 19.9.2000, relied upon by the third Respondent to cancel the community certificate issued in favour of the petitioner herein, came up for consideration.

26. This Court in the said decision, placing reliance upon the judgment reported in [C.M. Arumugam Vs. S. Rajgopal and Others](#), , [The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao](#), , [S. Swvigaradoss Vs. Zonal Manager, F.C.I.](#), , has set aside the clarification as given in sub-paragraph (2) to paragraph 2 of the above said letter and remanded the matter to the authority concerned with a direction to issue a fresh clarification giving reference to the other judgments rendered by the Supreme Court, as discussed above within a period of two months.

27. As per the ratio laid down in catena of decisions referred to above, it is clear that a person born to Christian parents on conversion to Hinduism will become a member of Hindu Scheduled Caste provided that if other members of the caste

accept him as a member and admit him within their fold. The Letter Ms. No. 81 sub-para (2) to paragraph No. 2 of the letter dated 19.9.2000 issued by the Adi-Dravidar and Tribal Welfare Department was also set aside by this Court and it was reported in (2007) 3 MLJ 209 Prof. I. Elangovan v. State of Tamil Nadu and Anr., (DB) (cited supra) and thereafter, the Government considered the said issue once again and issued G.O.Ms. No. 1, Adi-Dravidar and Tribal Welfare (CV-1), Department, dated 2.1.2009. As per the said G.O., children born to Christian Scheduled Caste parents on conversion to Hinduism, Sikhism, or Budhism at a later date and the Scheduled Caste parents embracing the above said religion and subsequently reconverted to Hinduism, if they are accepted by their community people, the Revenue Authorities can issue Scheduled Caste Certificate to them to become eligible for the Constitutional privileges conformed on the Hindu Scheduled Caste.

28. In respect of the case on hand, the petitioner by way of Additional Typed set of papers, has produced the Government Gazette, his marriage certificate, paper publication and the certificate issued by the School authorities regarding his children and the certificate issued by one Mr. Mani, and stated that since on conversion he became Hindu Scheduled Caste and professing Hinduism, and that some portion of the impugned letter dated 19.9.2000 relied on by the third Respondent has been set aside by this Court and subsequently G.O.Ms. No. 1, Adi-Dravidar and Tribal Welfare Department, dated 2.1.2009 came to be passed. The learned senior counsel appearing for the petitioner by placing reliance of those materials, submitted that the impugned order on the face of it is unsustainable and is liable to be quashed.

29. Per contra, the learned Special Government Pleader (writs) appearing for the third Respondent would submit that the certificates relied on by the petitioner have not been produced before the third Respondent and therefore, the impugned order passed by the third Respondent is sustainable.

30. The learned Counsel appearing for the second Respondent would submit that based on the impugned order, the Respondents 1 and 2 had initiated action against the petitioner and unless and until the said order is set aside/reconsidered, they cannot do anything.

31. This Court after taking into consideration the ratio laid down in the above cited decisions and the submissions made by the respective counsel is of the view that the impugned order is unsustainable and is liable to be set aside since the third Respondent places reliance upon the Government Letter dated 19.9.2000 a portion of which, has been set aside by this Court vide judgment dated 13.4.2007 made in W.P. No. 14769 of 2002 reported in (2007) 3 MLJ 209 (DB) Prof. I. Elangovan v. State of Tamil Nadu and Anr., (cited supra). The third Respondent has not taken into consideration the above cited decision and therefore on that sole ground, the impugned order is liable to be quashed.

32. After filing of the writ petition, the Government has considered the above cited decision and passed an order in G.O.Ms. No. 1, Adi-Dravidar and Tribal Welfare (CV-1) Department, dated 2.1.2009 under which, it has been clarified that the children born to Christian Scheduled Caste parents on reconversion to Hinduism, can avail the constitutional privileges of the Hindu Scheduled Caste community subject to the condition that they should be accepted by their community people.

33. Though the petitioner relies upon number of documents to substantiate that he has been converted to Hinduism and professing Hindu faith, this Court cannot adjudicate the vires/genuineness of those documents and it is for the third Respondent to adjudicate the same and pass appropriate orders on merits.

34. In the result, the writ petition is allowed and the impugned order dated 13.4.2008 passed by the third Respondent is quashed and the matter is remanded to the third Respondent for fresh consideration on merits and in accordance with law. It is open to the petitioner to let in evidence before the third Respondent to substantiate his claim.

35. The Respondents 1 and 2, till such adjudication is made by the third Respondent, are directed not to terminate the services of the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.