

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03.09.2018

Orders Pronounced on : 12.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.6546 of 2018

G.J.Tamilarasu

Vs.

.. Petitioner

1. The State of Tamil Nadu,
Represented by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
 2. The District Collector,
Erode District, Erode, Tamil Nadu.
 3. The Commissioner,
The Commission for Adi Dravidar Welfare,
Chennai-5.
 4. Buddhist Society of India,
Head Quarters - Tamil Nadu,
19/44, Thirunagar,
Villivakkam, Chennai-600 049.
 5. The Thasildar,
Perunduari, Erode District.
 6. Revenue Divisional Officer,
Erode, Erode District.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records relating to the second respondent's proceedings made in Na.Ka.No.5700/2016/Ta6 and quash the impugned order dated 24.08.2017 and to consequently direct the respondents to issue a Community Certificate as Buddhist Adi-Dravidar to the petitioner.

For petitioner : Mr.I.Jenkins Villiam
for Mr.Mazhaimeni Pandian

For respondents : Ms.Narmadha Sampath,
Addl. Advocate General,
assisted by Mr.S.N.Parthasarathy,
Govt. Advocate

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for records relating to the second respondent's proceedings made in Na.Ka.No.5700/2016/Ta6 and quash the impugned order dated 24.08.2017 and to consequently direct the respondents to issue a Community Certificate as Buddhist Adi-Dravidar to the petitioner.

2. Brief facts of the case of the petitioner are as follows:

(a) The petitioner was born on 05.12.1970 to Christian parents at Nichampalayam Village, Perundurai Taluk, Erode District. The name given to the petitioner by his parents is Victor Joseph.J. For the sake of education, while he was studying in XI Std., he had obtained Community Certificate, dated 12.06.1989 as Christian Adi Dravidar. Thereafter, he completed his M.A. Degree during December 1998 and obtained B.Ed. Degree during May 2007.

(b) During the year 2015, the petitioner got himself converted to Buddhism, as he was drawn towards its Doctrine due to its religious customs and practices. After following all the processes for his religious conversion to Buddhism, his name was changed from Victor Joseph.J, to be called as G.J.Tamilarasu.

(c) The Certificate, dated 09.05.2015 reflecting his religious conversion and his name change, was issued by the fourth respondent-Buddhist Society of India. The petitioner's change of name was also notified in the Tamil Nadu Government Gazette, dated 10.06.2015. On 02.09.2015, he applied for issuance of Community Certificate in his name G.J.Tamilarasu, as belonging to Buddhist Adi Dravidar Community, along with all the necessary documents to the fifth respondent. The fifth respondent, vide proceedings dated 17.10.2016, had rejected the application of the petitioner.

(d) Aggrieved by the above rejection order, the petitioner has filed an appeal before the sixth respondent on 31.10.2016 praying to re-consider the request of the petitioner and issue the Community Certificate indicating the Community as Buddhist Adi Dravidar. The sixth respondent, by proceedings dated 23.03.2017, dismissed the appeal. In the order passed under the said appeal, the sixth respondent has assigned reason as if the

petitioner has maliciously got converted to Buddhist Adi Dravidar only for getting the benefits from the respondents. Further, in the said order, it has also been stated that the petitioner alone was converted into Buddhism and not his wife or children.

(e) Aggrieved by the abovesaid order passed in the appeal, again the petitioner has preferred another appeal before the second respondent, which was also dismissed, vide order dated 24.08.2017. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

3. When the Writ Petition is taken up for consideration, learned counsel for the petitioner invited the attention of this Court to G.O.Ms.No.1, Adi Dravidar and Tribal Welfare (CV-1) Department, dated 02.01.2009, and paragraph 4 therein reads as follows:

"4. In order to clear the ambiguity and also to certify the Adi Dravidar people who have converted to Hinduism, Sikhism or Buddhism from other religions, the Government have issued the instructions as referred to in paragraph 2 above based on the orders of the Hon'ble High Court of Madras, the instructions of the Government of India, orders of the Hon'ble Supreme Court, legal opinion given by the Advocate General and Additional Advocate General, Government of Tamil Nadu, the Government have examined the issue in detail. As per the orders of the Hon'ble High Court of Madras, the Government have now issue the following revised instructions cancelling the clarifications issued in letter No.81, Adi Dravidar and Tribunal Welfare Department, Dt.19.9.2000:

"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 conformed on the Hindu

Scheduled Caste (following Hinduism, Sikhism or Buddhism) and order accordingly."

Learned counsel for the petitioner, by relying the abovesaid G.O., submitted that the said G.O. is clearly in favour of the petitioner.

4. Learned counsel for the petitioner further submitted that the sixth respondent-Revenue Divisional Officer, in his proceedings, dated 23.03.2017, observed that the petitioner alone got converted to Buddhism and not his family members. In this regard, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2016 (11) SCC 617 (Mohd. Sadique Vs. Darbara Singh Guru) and submitted that as per the dictum laid down by the Apex Court in the said judgment, it is not essential that the entire family of a person should convert or re-convert to a religion to which the person has converted or re-converted. Hence, such a reason cannot be a ground for rejecting the issuance of Community Certificate. Learned counsel for the petitioner thus submitted that in the light of the above said G.O., coupled with the abovesaid decision of the Supreme Court, the petitioner is entitled to the relief sought for in this Writ Petition.

5. Countering the above submissions, learned Additional Advocate General appearing for the respondents submitted that the petitioner was born to Christian parents and he had professed Christianity till April 2015 and the Community falls under Backward Class Community. Further, there is no such entry as Buddhist Adi Dravidar in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and hence, the petitioner could not be issued with a Scheduled Caste Certificate as Buddhist Adi Dravidar. Further, G.O.Ms.No.1, dated 02.01.2009 relied on by the learned counsel for the petitioner, is not applicable to the case of the petitioner and it applies where a person converts back to his parent/original religion and if such re-conversion is accepted by the persons of such Community. That is not the position here and there is no re-conversion back to his original religion. Hence, the petitioner is not eligible for issuance of Community Certificate indicating "Buddhist Adi Dravidar" as his Community/Caste. In support of her submissions, learned Additional Advocate General appearing for the respondents relied on the decisions reported in: (i) 1976 (1) SCC 863 (C.M.Arumugam Vs. S.Rajagopal and others) and (ii) 1976 (3) SCC 411 (Guntur Medical College Vs. Mohan Rao).

6. By way of reply, learned counsel for the petitioner submitted that the said G.O.Ms.No.1, dated 02.01.2009 issued by the first respondent, is clearly in favour of the petitioner and it squarely applies to the case of the petitioner. In the said G.O., in paragraph 4, extracted supra, it is stated that, "... 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." Hence, learned counsel for the petitioner prayed for a direction to the respondents to issue Community Certificate to the petitioner indicating the Community/Caste as Buddhist Adi Dravidar.

7. Keeping in mind the above submissions made by the learned counsel for both sides, we have carefully perused the materials available on record.

8. The petitioner is mainly staking his claim based on the said G.O.Ms.No.1, dated 02.01.2009. On a careful perusal of the said G.O., we are of the opinion that it applies only to persons who have re-converted back to their original Community/Religion, that too on being accepted again by the Community of their original religion. The question of re-conversion, is not the case here, as the petitioner has just converted to Buddhism and not re-converted back to Hinduism. Admittedly, the ancestors of the petitioner do not belong to Buddhism. If the ancestors of a person belong to Hinduism and converted to Christianity, then if any one of the descendants after two or three generation, if re-converted back to Hinduism and on being accepted by the Hinduism Community, only then the said G.O. would be made applicable and that person will get the status of a particular Community. In the instant case, originally the petitioner's family was professing Hinduism, then they converted to Christianity and the petitioner in particular, got converted to third religion, namely Buddhism. Therefore, he is skipping from one religion to another, which will not give the benefit of claiming the status of Buddhist Adi Dravidar by issuance of Community Certificate.

9. The decisions relied on by the learned Additional Advocate General appearing for the respondents, reported in 1976 (1) SCC 863 (cited supra) and 1976 (3) SCC 411 (cited supra), are squarely applicable to the facts of this case, and the relevant portion of the same are extracted hereunder:

(i) 1976 (1) SCC 863: (C.M.Arumugam Vs. S.Rajagopal):

"16. The last contention, which formed the subject-matter of controversy between the parties, raised the issue whether on reconversion to Hinduism, the 1st respondent could once again become a member of the Adi Dravida caste, assuming that he ceased to be such on conversion to Christianity. The

argument of the appellant was that once the 1st respondent renounced Hinduism and embraced Christianity, he could not go back to the Adi Dravida caste on reconversion to Hinduism. He undoubtedly became a Hindu, but he could no longer claim to be a member of the Adi Dravida caste. This argument is not sound on principle and it also runs counter to a long line of decided cases. Ganpathi Iyer, a distinguished scholar and jurist, pointed out as far back as 1915 in his well-known treatise on Hindu Law :

" caste 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. It cannot be said, however, that membership by caste is determined only by birth and not by anything else." (emphasis supplied)"

Chandavarkar, J., observed in Nathu Vs. Keshwaji, ILR 26 Bom 174 : 3 Bom LR 718:

"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 any one it likes as its member. To hold that the membership of a caste is determined by birth is to hold that the caste cannot, if it likes, mix with another caste and form both into one caste. That would be striking at the very root of caste autonomy."

Sankaran Nair, J., made observations to the same effect in Muthusami's case ILR 33 Mad 342 : 20 Mad.L.J. 49 (supra) and concluded by saying:

"It is, of course, open to a community to admit any person and any marriage performed between him and any member would in my opinion, be valid".

Ganapathi Iyer, after referring to these two decisions, proceeded to add:

"Of course it is open to a person to change his caste by entering another caste if such latter caste will admit him in this sense there is nothing to prevent a person from giving up his caste or community just as the caste may re-admit an expelled person or an outcasted person if he conforms to the caste observances."

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 formalised: they may not exist in black and white: they may consist only of practices and usages. If, according to the practices and usages of the caste, any particular ceremonies are required to be performed for readmission to the caste, a reconvert to Hinduism would have to perform those ceremonies if he seeks readmission to the caste. That is why Parker, J., dealing with the possible readmission of a reconvert to Brahminism observed in Administrator-General of Madras Vs. Anandachari, ILR 9 Mad 466:

"His conversion to Christianity according to the Hindu law, rendered him an outcaste and degraded. But according to that law, the degradation might have been atoned for, and the convert readmitted to his status as a Brahmin, had he at any time during his life renounced Christianity and performed the rites of expiation enjoined by his caste."

The rites of expiation were referred to by the learned Judge because they were enjoined by the Brahmin caste to which the reconvert wanted to be readmitted. But if no rites or ceremonies are required to be performed for readmission of a person as a member of the caste, the only thing necessary for readmission would be the acceptance of the person concerned by the other members of the caste. This was pointed out by Varadachariar,

J., in Gurusami Nadar Vs. Irulappa Konar, AIR 1934 Mad 630 : 67 Mad LJ 389, where after referring to the aforesaid passage from Administrator-General of Madras Vs. Anandachari (supra), the learned judge said:

"The language used in ILR 9 Mad 466 merely refers to the expiatory ceremonies enjoined by the practice of the community in questions: and with reference to the class of people we are now concerned with, no suggestion has anywhere been made in the course of the evidence that any particular expiatory ceremonies are observed amongst them. No particular ceremonies are prescribed for them by the Smriti writers nor have they got to perform any Homas. One has therefore only to look at the sense of the community and from that point of view it is of particular significance that the community was prepared to receive Vedanayaga and defendant No.5 as man and wife and their issue as legitimate."

These observations of Varadachariar, J., were approved by Mockett, J., in Durgaprasada Rao Vs. Sudarsanaswami, AIR 1940 Mad 513: ILR 1940 Mad 653 : (1940) 1 Mad LJ 800 and he pointed out that in the case before him, there was no evidence of the existence of any ceremonial in Veda Baligi fisherman community of Gopalpur for readmission to that community. Krishnaswami Ayyangar, J., also observed in the same case that "in matters affecting the well being or composition of a caste, the caste itself is the supreme judge". (Emphasis supplied). The same view has also been taken in a number of decisions of the Andhra Pradesh and Madras High Courts in election petitions arising out of 1967 General Election. These decisions have been set out in the judgment of this Court in Rajgopal Vs. C.M.Arumugam, (1969) 1 SCR 254 : AIR 1969 SC 101) (supra).

17. These cases show that the consistent view taken in this country from the time Administrator-General of Madras Vs. Anandachari, ILR 9 Mad 466, was decided, that

is, since 1886, has been 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. There is no reason either on principle or on authority which should compel us to disregard this view which has prevailed for almost a century and lay down a different rule on the subject. 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 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 is the orthodox Hindu society still dominated to a large extent, particularly in rural areas, by medievalistic outlook and status-oriented approach which attaches social and economic disabilities to a person belonging to a Scheduled Caste and that is why certain favoured 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 are disabilities inflicted by Hinduism. A Mahar or a Koli or a Mala would not be recognised 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. We accordingly agree with the view taken by the High Court that on reconversion to Hinduism, the 1st respondent could once again revert to his original Adi Dravida caste if he was accepted as such by the other members of the caste."

(ii) 1976 (3) SCC 411 : (Guntur Medical College Vs. Mohan Rao):

"6. The main question which arose for decision in C.M.Arumugam Vs. S.Rajgopal was whether S.Rajgopal, who belonged to Adi Dravida caste before his conversion to Christianity, could, on reconversion to Hinduism, once again become a member of the Adi Dravida caste. This court, after examining the question on principle and referring to the decided cases, pointed out that the consistent view taken in this country since 1886 was 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. This court observed that there was no reason, either on principle or on authority, which should compel it to disregard this view which has prevailed for almost a century and lay down a different rule on the subject and concluded that on reconversion to Hinduism, S.Rajgopal could once again revert to his Adi Dravida caste, for he was accepted by the other members of the caste.

7. The reasoning on which this decision proceeded is equally applicable in a case where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism, the members of the caste to which the parents belonged prior to their conversion accept him as a member within the fold. It is for the members of the caste to decide whether or not to admit a person within the caste. Since the 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 only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste, for, as pointed out by Krishnaswami Ayyanger, J. in Durgaprasada Rao Vs. Sudarsanaswami, AIR 1940 Mad 513 : ILR 1940 Mad 653 : (1940) 1 MLJ 800,, "in matters affecting the well being or composition of a caste, the caste itself is the supreme judge" (emphasis supplied). It will, therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course, but he would become such member, if the other members of the caste accept him as a member and admit him within the fold.

8. This view would have ordinarily required us to find whether, on the material on record, it could be said to have been established by the respondent that, on conversion to Hinduism, he was accepted as a member of Madiga caste by the other members of that caste, for it is only if he was so accepted that he could claim to be a member of a scheduled caste. But it is not necessary for us to undertake this inquiry because, as already pointed out, it has been agreed by the State that, whatever be the result of this appeal, the admission of the respondent will not be disturbed."

10. Here, the petitioner has converted from Christianity to Buddhism and not back to Hinduism, though the fact remains that the petitioner's grandfather belonged to Hinduism, and thereafter they converted to Christianity and as such, the petitioner has converted to a third religion, namely Buddhism and not reverted to Hinduism, i.e. the original religion, which the petitioner's grandfather belonged to.

11. It is also useful to refer a decision of the Supreme Court reported in 2015 (4) SCC 1 (K.P.Manju Vs. Scrutiny Committee for Verification of Community Certificate), wherein the Supreme Court, by considering the abovesaid two judgments of the Supreme Court and also various other judgments, observed as follows:

"38. In our considered opinion, three

things that need to be established by a person who claims to be a beneficiary of the caste certificate are: (i) there must be absolutely clear-cut proof that he belongs to the caste that has been recognised by the Constitution (Scheduled Castes) Order, 1950; (ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and (iii) there has to be evidence establishing the acceptance by the community. Each aspect according to us is very significant, and if one is not substantiated, the recognition would not be possible."

12. It is admitted that the petitioner's ancestors originally belonged to Hinduism and they have converted themselves to Christianity and it is only the petitioner who has converted to a third religion, namely Buddhism and not re-converted to Hinduism.

13. Moreover, it is to be noted that the acceptance of the people of a respective Caste/Community can be ascertained only from the sense of reaction of the Community and the point of view which the Community holds, has its own significance and it eliminates the factor of acceptance arising out of ceremonies. Buddhism never appreciates the factum of "caste" in its ideologies and preaching, and this is the reason behind Buddhism that has its own significance. When this being the factor, the petitioner's claim of conversion to Buddhism, is of little significance. That being the case, the question of issuing Community Certificate indicating the Community/Caste as "Buddhist Adi Dravidar" does not arise.

14. Further, there is no entry as "Buddhist Adi Dravidar" in the Presidential Order issued in accordance with the procedures prescribed under Articles 341 and 342 of the Constitution of India. In the absence of any Notification by the Government of India, listing "Buddhist Adi Dravidar" as a Caste in the Schedule, no such Community Certificate could be issued. The Community Certificates could be issued only in the name of the communities, which are mentioned in the Presidential Order issued under Article 341 of the Constitution of India and it is only "Adi Dravidar" community which has been mentioned in the list of Scheduled Castes relating to the State of Tamil Nadu. Moreover, there is no category with the nomenclature "Buddhist Adi Dravidar".

15. For all the above reasons, we are of the view that absolutely, there is no infirmity in the impugned order passed by the second respondent-District Collector. Hence, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
2. The District Collector,
Erode District, Erode, Tamil Nadu.
3. The Commissioner,
The Commission for Adi Dravidar Welfare,
Chennai-5.
4. Buddhist Society of India,
Head Quarters - Tamil Nadu,
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5. The Thasildar,
Perunduari, Erode District.
6. Revenue Divisional Officer,
Erode, Erode District.

+2cc to Mr. Mazhaimeni Pandian, Advocate, S.R.No. 63889

W.P.No.6546 of 2018

GN(26/09/2018)