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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 29.03.2019
Pronounced on : 04.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)Nos.12238, 15581 & 24229 of 2018
and
WMP(MD)Nos.11134, 13997, 13998, 21914 & 21915 of 2018

A.Sivakumar ... Petitioner in WP(MD)No.12238 of 2018

J.Selvin Thiyagarajan ... Petitioner in WP(MD)No.15581 of 2018

V.Nadesh ... Petitioner in WP(MD)No.24229 of 2018

Vs.

1.The Director, Dr.Ambedkar Foundation,
Ministry of Social Justice and Empowerment,
Government of India, 15, Janpath,
New Delhi - 110 001.

2.The Secretary to Government,
Adi Dravidar and Tribal Welfare
Department,
Government of Tamil Nadu,
State Secretariat,
Chennai - 600 009. ... Respondents in all cases

Common Prayer : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent relating to the proceedings in reference no.F.No.34-1/2014/DAF/Vol.III and quash the order dated 28/12/2017 insofar as it relates to the petitioners' inter-caste marriage and consequently direct the 1st respondent to make payment of Rs.2.50 lakhs to the petitioners under Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages together with interest at the rate of 12% p.a. and award exemplary costs.

In all cases :
For Petitioner
in all cases : Mr.R.Krishnan

For Respondents
in WP(MD)No.12238 of 2018 : Mr.M.Ashok Kumar for R1

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Mr.M.Karuppasamy
Government Advocate for R2

For Respondents
in WP(MD)No.15581 of 2018 : Mr.S.Jeyasing for R1

Mr.K.Mu.Muthu,
Additional Government Pleader for R2

For Respondents
in WP(MD)No.24229 of 2018 : Mr.H.Velavadhas for R1

M.Karuppasamy,
Government Advocate for R2

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner in WP(MD)No.12238 of 2018, namely, A.Sivakumar belongs to Hindu Pallan Community. It is a notified scheduled caste community in the State of Tamil Nadu. The competent authority has certified that he belongs to the said community. He got married to one V.S.Nivethaa on 08.06.2016. The said Nivethaa belongs to Hindu Vaniya Chettiar Community. It is not a scheduled caste. Thus, the marriage solemnized between the two is an intercaste marriage. The Tahsildar, Tirunelveli has issued a certificate dated 22.07.2016 stating that the marriage between A.Sivakumar and V.S.Nivethaa is an intercaste marriage. The Collector, Tirunelveli has recommended that the said intercaste marriage couple are eligible for obtaining incentive under Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages.

3.The petitioner in WP(MD)No.15581 of 2018, namely, J.Selvin Thiyagarajan belongs to Hindu Pallan community. It is a notified scheduled caste. He got married to T.Saranya Kanimozhi on 14.09.2016. She belongs to Hindu Nadar community. It is not a scheduled caste. The Tahsildar, Sattur has issued a intercaste marriage certificate on 08.05.2017 certifying that the marriage solemnized between Selvin Thiyagarajan and T.Saranya Kanimozhi is an intercaste marriage. The District Social Welfare Officer, Virudhunagar has also certified that they had not availed any other financial assistance for having entered into an intercaste marriage.

4.The petitioner in WP(MD)No.24229 of 2018, namely, V.Nadesh belongs to Hindu Vellalar community. It is a forward caste. He got married to D.S.Manikandeeswari on 10.02.2016. She belongs to Hindu Vedan community which is a notified scheduled caste community. The Tahsildar, Thovalai has issued a certificate dated 04.04.2016 mentioning that the marriage that took place between this couple is an intercaste marriage. The District Social Welfare Officer, Kanyakumari District has issued a No Objection Certificate. Their application has been duly recommended by the local MLA.

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5.The first respondent by the impugned common order dated 28.12.2017 had rejected the applications seeking incentive under

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Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages. The only ground of rejection is that the marriages were not registered under the Hindu Marriage Act, 1955. The first respondent has informed that the proposals could not be considered favourably. The writ petitioners question the correctness of the stand taken by the first respondent.

6.The learned counsel appearing for the first respondent submitted that the reason set out in the impugned communication is sound and correct. I am however of the view that the order impugned in these writ petitions will have to be quashed insofar as the petitioners are concerned. The Ministry of Social Justice and Empowerment, Government of India introduced Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages since it was felt that intercaste marriages can be one of the significant steps to reduce caste prejudice and untouchability and spread the values of liberty, equality and fraternity etc., in the society. The eligibility criteria set out in the scheme are as under :

> "1.An intercaste marriage, for the purpose of this Scheme means a marriage in which one of the spouses belongs to Scheduled Caste and the other belongs to a Non-Scheduled Caste.
>
> 2.The marriage should be valid as per the law and duly registered under the Hindu Marriage Act, 1955. An affidavit of their being legally married and in matrimonial alliance would be submitted by the couple.
>
> 3.No incentive is available on second or subsequent marriage.
>
> 4.Proposal would be treated as valid if submitted within one year of marriage."

The eligibility criteria has not been set out in a statute but in a scheme. Therefore a greater leeway can be assumed while construing them. Of course, it should be interpreted in such a manner so as to effectuate the purpose of the scheme. The Hon'ble Division Bench of the Delhi High Court in the decision reported in 1998 SCC Online Del 80 (Shubhi Khandelwal vs. University of Delhi and Ors, observed as follows :

> "27.Mr. Sanghi, learned counsel for the appellant also placed reliance on M/s Girdhari Lal & Sons vs. Balbir Nath Mathur and others, [1986]1SCR383 , in which the Court held as under:-.
>
> "The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plan meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid

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> invalidation of a law, the court would be well justified in departing from the so called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary.
>
> 28.On a close scrutiny and analysis of the aforesaid cases of the Supreme Court, it is clear that in interpreting the statute, rule, or enactment, the paramount consideration should always be to gather the intention of legislature or purpose for which that statute, rule or enactment has been incorporated. The court cannot be indifferent to the consequences flowing from such construction. Irrespective of the words used in the enactment, the court's powers to interpret the provisions in order to gather the legislative intention always remain unimpaired."

Viewed in this perspective, the condition "marriage should be valid as per the law and duly registered under the Hindu Marriage Act, 1955," can only mean that a valid marriage should have been performed under the Hindu Marriage Act and registered.

7.It is not in dispute that one of the parties to the marriage in all these three cases belongs to a Scheduled Caste while the other belongs to a non scheduled caste. The application was submitted within time. They have not already received any incentive from the State Government for having entered into an intercaste marriage. The authorities have duly recommended the applications for grant of incentive. According to the first respondent, the only impediment is non registration of the marriages in question under the Hindu Marriage Act, 1955.

8.As rightly contended by the learned counsel appearing for the writ petitioners, the first respondent has not taken note of the statutory amendment made by the State of Tamilnadu to the Hindu Marriage Act, 1955. Section 7 of the Hindu Marriage Act, 1955 states that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken. But, in its application to the State of Tamil Nadu, the Act provides for not only such sacramental marriages but also what are known as *suyamariyathai* and *seerthiruththa* marriages.

9.Section 7-A was added vide Tamil Nadu Act 21 of 1967. The said provision reads as under :

> "7-A.*Special provision regarding suyamariyathai and seerthiruththa marriages*.- (1)This section shall apply to any marriage between any two Hindus, whether called *suyamariyathai* marriage or *seerthiruththa* marriage or by any other name, solemnized in the presence of relatives,

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friends or other persons-

(*a*)by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(*b*)by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(*c*)by the tying of the thali.

(2)(*a*)Notwithstanding anything contained in section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnized after the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, shall be good and valid in law.

(*b*)Notwithstanding anything contained in section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, but subject to sub-section (3), all marriages to which this section applies solemnized at any time before such commencement shall be deemed to have been, with effect on and from the date of the solemnization of each such marriage, respectively, good and valid in law.

(3)Nothing contained in this section shall be deemed to-

(*a*)render valid any marriage referred to in clause (*b*) of sub-section (2), if before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967,-

(*i*) such marriage has been dissolved under any custom or law; or

(*ii*) the woman who was a party to such marriage has, whether during or after the life of the other party thereto, lawfully married another, or

(*b*)render invalid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was valid at that time; or

(*c*)render valid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was invalid at that time on any ground other than that it was not solemnized in accordance with the customary rites and ceremonies of either party thereto:

Provided that nothing contained in this sub-section shall render any person liable to any punishment whatsoever by reason of anything done or omitted to be done by him before such commencement.

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(4) Any child of the parties to a marriage referred to in clause (*b*) of sub-section (2) born of such marriage shall be deemed to be their legitimate child:

Provided that in a case falling under sub-clause (i) or sub-clause (ii) of clause (*a*) of sub-section (3), such child was begotten before the date of the dissolution of the marriage or, as the case may be, before the date of the second of the marriages referred to in the said sub-clause (ii)."

10.It is true that for the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose. This led to issuance of Hindu Marriage Registration (Tamil Nadu) Rules, 1967. But, entering of the marriage particulars in the Hindu Marriage Register is only recording of a marriage that had already taken place.

11.That apart, it was only optional. In the decision reported in ***AIR 2006 SC 1158 (Seema vs Ashwani Kumar),*** the Hon'ble Supreme Court of India was of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in the respective States, where the marriage is solemnized. Therefore, in order to provide for the compulsory registration of all marriages of all persons who are the citizens of India belonging to various religions in the State, Tamil Nadu Registration of Marriages Act, 2009 was enacted. Rules were framed thereunder. Rule 5(1)(a) contemplates that every memorandum for registration of marriage shall be in Form-I. The application for filing the memorandum of marriage will be in Form-II. Thereupon, the Registrar of Marriages would issue certificate of registration of marriage in Form-III. Section 7 of th Tamil Nadu Registration of Marriages Act, 2009 empowers the Registrar to refuse to register the marriage under certain circumstances. Section 7 (1) of the Act would read as under :

"7.(1)Where the Registrar, before whom the memorandum is delivered or sent under section 5 on scrutiny of the documents filed with the memorandum or, on the other facts noticed or brought to his notice, is satisfied or has reason to believe that,—

(a)the marriage between the parties is not performed in accordance with the personal laws of the parties, or any custom or usage or tradition; or

(b)the identity of the parties or the witnesses or the persons testifying the identity of the parties and the performance of the marriage is not established beyond reasonable doubt ; or

(c)the documents tendered before him do not prove the marital status of the parties,

he may, after hearing the parties and recording the

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reasons in writing, refuse to register the marriage and may,—

(i)call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him, or

(ii)if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification"

12.Marriage can be performed under the personal law of the parties concerned. Or it can be a civil marriage under The Special Marriage Act, 1954. The first condition set out in Section 5 of the Hindu Marriage Act, 1955 is that it should have been solemnized between two Hindus. Likewise, unless both the parties profess the same religion, a valid marriage cannot be performed under the respective personal laws. Inter-religious marriage can be validly performed only under the Special Marriage Act, 1954. If a marriage has been registered under the Tamil Nadu Registration of Marriages Act, 2009, it is obvious that a valid marriage had already been solemnized. In the cases on hand, the parties herein have affirmed in a solemn affidavit filed before this Court that their marriage was performed in terms of the Hindu Marriage Act, 1955. One of the parties to the marriage in each of the three cases belongs to scheduled caste while the other belongs to a non scheduled caste. When the competent authorities have issued certificates in this regard, it is not for the first respondent to question the same. Even though one of the eligibility criteria is that the marriage should have been duly registered under the Hindu Marriage Act, 1955, in view of the local law made in the State of Tamil Nadu, registration of the marriage made under the Tamil Nadu Registration of Marriages Act should be more than sufficient for the purpose of disbursing the incentives under Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages. The effect of Section 7 (1) of the Tamil Nadu Registration of Marriages Act, 2009 in this case is that the registering authority was satisfied that a valid marriage was performed between the parties in accordance with their personal law, namely, the Hindu Marriage Act, 1955.

13.The first respondent should give a purposive interpretation to the scheme requirements. In fact, the first respondent should approach the issue in such a manner that the noble object of the scheme is fulfilled. The purpose of the scheme is to encourage intercaste marriages among the Hindus. The materials enclosed in the typed set of papers establish beyond any doubt that the parties to the marriage are Hindus and that one of them is a Scheduled Caste while the other is a non Scheduled Caste and that they had undergone an intercaste marriage. It is relevant to note that the jurisdictional Tahsildar in each of the cases has certified that the marriages in question are intercaste marriages. Therefore, the common order impugned in these writ petitions stands quashed insofar

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as the petitioners are concerned. The first respondent is directed to disburse the incentive payable to the petitioners herein as per Dr.Ambedkar Scheme for Social Integration through Inter-Caste Marriages, within a period of eight weeks from the date of receipt of a copy of this order.

14.These writ petitions stand allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS I)

To

1.The Director, Dr.Ambedkar Foundation, Ministry of Social Justice and Empowerment, Government of India, 15, Janpath, New Delhi - 110 001.

2.The Secretary to Government, Adi Dravidar and Tribal Welfare Department, Government of Tamil Nadu, State Secretariat, Chennai - 600 009.

+1cc to Mr.S.JEYASINGH,Advocate, SR.No. 66968
+1cc to Mr.M.ASHOK KUMAR, Advocate, SR.No. 67157
+1cc to Mr.H.VELAVADHAS, Advocate, SR.No. 66948
+3cc to Mr.R.KRISHNAN,Advocate, SR.No.67242,67244,67245

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04.06.2019

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