

S. ANBALAGAN

B. DEVARAJAN & ORS.

December 5, 1983

[S. MURTAZA FAZAL ALI, O. CHINNAPPA REDDY AND

E. S. VENKATARAMIAH, JJ.]

Hindu Law—Hindu embracing another religion—whether retains original cast. On reconversion to Hinduism—Whether performance of any particular ceremony or expiatory rites necessary.

Representation of the people Act.—Parliamentary election—Constituency reserved for scheduled castes—Whether a Hindu Adi Dravida (scheduled cast) on reconversion to Hinduism belongs to scheduled castes.

The first respondent was elected to the Lok Sabha from a constituency which was reserved for the Scheduled Castes, The appellant challenged the election of the first respondent on the ground that he was not a member of the Scheduled Castes. The election Tribunal found that the first respondent belonged to the Scheduled Caste and upheld the election. Hence this appeal. The appellant urged that the parents and the sisters of the respondent were shown to be Christians and the respondent was born a Christian and there was no way he could acquire a caste and become an Adi Dravida on conversion to Hinduism.

Dismissing the appeal.

HELD : At all relevant time, the first respondent was a Hindu Adi Dravida and professed no religion other than Hinduism.

The precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for reconversion to Hinduism of a person who had earlier embraced another religion. Unless the practice of the Caste makes it necessary no expiatory rites need be performed and, ordinarily, he regains this caste unless the community does not accept him. In fact, it may not be accurate to say that he regains his caste, it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deeprooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, it disappears only to re-

appear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion. [1981A—C]

Administrator—General of Madras v. Anandachari & Ors. ILR 9 MADRAS 466, *Muthusami Mudalia & Anr. v. Masilamani & Ors.* ILR 33 MADRAS 342, *Gurusami Nadar v. Irulappa Konar*, 67 MADRAS LAW JOURNAL 399, *Ramayya v. Mrs. Josephine Elizabeth*, AIR 1937 MAD 172, *Goona Durgaprasad Rao v. Sudarsanaswami*, ILR 1940 MAD 653, *Rajgopal v. Armugom & Ors.* [1969] I SCR 254, *Rajgopal v. Armugam* [1969] I SCR 254, *Perumal Nadar v. Ponnuswami* [1971] I SCR 49, *Yermani v. Yermani* AIR 1943 LAHORE 51 and *Chatturbhuj Vithaldas Jasani v. Moreshwer Parashram & Ors.* [1954] SCR 817, referred to.

In the instant case the birth extract of the first respondent shows his parents as Hindu Adi Dravidas. Through out his educational career, he was treated as a Hindu student belonging to the Scheduled Castes and was awarded scholarships on that basis. The school records relating to his children also show them as Hindu Adi Dravidas. He never attended a church. On the other hand there is acceptable evidence to show that he was offering worship to Hindu deities in Hindu temples and that his marriage was performed according to Hindu custom and rites. Even assuming that the parents and sisters of the first respondent had become Christians and that the first respondent himself had been baptised when he was seven months old, there is no difficulty in holding, on the evidence in the case, that the first respondent had long since reverted to Hinduism and to the Adi Dravida Caste. There is not a scrap of acceptable evidence to show that he ever professed Christianity after he came of age. On the other hand, every bit of evidence in the case shows that from his childhood, he was always practising Hinduism and was treated by everyone concerned as an Adi Dravida. There is then the outstanding circumstance that the voters of the Constituency reserved for the Scheduled Castes accepted his candidature for the reserved seat and elected him to the Lok Sabha twice. [891H ; 892A—E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 544 of 1981.

From the Judgment and Order dated 23rd December, 1980 of the Madras High Court at Madras in Election Petition No. 1 of 1980.

Dr. Y.S. Chitale, P.N. Ramalingam and A.T.M. Sampath for the Appellant.

M.C. Bhandare, K. Rajendra Chowdhary and K.S. Chowdhary for the Respondents.

A.V. Rangam for the Respondent No. 7.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. 3, 26, 112 adult men and women voters of Rasipuram Parliamentary Constituency reserved for the Scheduled Castes accepted the candidature of the first Respondent, B. Devarajan for the reserved seat, apparently considered him as a member of the Scheduled Castes, voted for him and elected him to the Lok Sabha, by a convincing majority of nearly sixty thousand votes at the election held in January 1980. And, it was not the first time. He was in fact a sitting member of the Lok Sabha having been elected from the same reserved constituency at the previous general election also. But the verdict of the people was not sufficient for the appellant, S. Anbalagan, who secured 1,76,240 votes in the January 1980 poll and lost the election. He wanted the verdict of an Election Tribunal on the question whether the respondent was a Christian and not a member of the Scheduled Castes, as claimed by him. So he filed an election petition questioning the election on that ground. The Election Tribunal on an elaborate consideration of the evidence held that the appellant belonged to the Scheduled Castes and, on that finding, upheld the election. Anbalagan has preferred this appeal.

Dr. Chitale, learned counsel for the appellant, canvassed the finding of the Election Tribunal that the respondent was a Hindu Adi Dravida and, therefore, a member of the Scheduled Castes. He argued that the parents and the sisters of the respondent were shown to be Christians and the respondent though obviously a Christian himself was pretending to be a member of the Scheduled Castes for the purpose of gaining some advantages. He invited our attention to the Baptismal certificate and certain other documents and urged that the Respondent was born a Christian and there was no way he could acquire a caste and become an Adi Dravida on conversion to Hinduism.

In order to properly appreciate the questions involved, it is necessary first to understand the legal position in regard to caste-status on conversion or reconversion to Hinduism.

In *Administrator-General of Madras v. Anandachari & Others*⁽¹⁾, a learned single Judge of the Madras High Court held that the conversion of a Hindu Brahmin to Christianity rendered him, according to Hindu Law, an out caste and degraded. It was also observed that the degradation might be atoned for and the convert readmitted to his status as a Brahmin, if he at any time during his

(1) ILR 9 Madras 466.

A life renounced Christianity and performed the rites of expiation enjoined by his caste.

B In *Muthusami Mudaliar & Anr. v. Masilamani & Others*(¹) Shankaran Nair, J. explained at length the process of formation of castes and also pointed out how simple the matter of reconversion to Hinduism was when a Hindu changed his religion and later reverted back to Hinduism.

C In *Gurusami Nadar v. Irulappa Konar*(²), Varadachariar, J. explained the observations made in certain cases by Ananta Krishna Iyer, J. about the necessity of expiatory ceremonies for reconversion to Hinduism and pointed out that in those cases, the alleged reconversion was into the Brahmin community of Hindus and it was possible to suggest that certain vedic rites would have been adopted in such cases. Expiatory ceremonies, it was further pointed out, would be necessary if such was the practice of the community and not otherwise. One had, therefore, only to look to the sense of the community and no more. In *Ramayya v. Mrs. Josephine Elizabeth*(³) Venkatasubba Rao, OJ and Venkataramana Rao, J. approved the observations of Varadachariar, J. and thought it unnecessary to pursue the matter further. Mockett and Krishnaswami Ayyangar, JJ. in *Goona Durgaprasad Rao v. Sudarsanaswami*(⁴) observed that a convert from the Baliji caste to Christianity, on reconversion went back into the fold of the Baliji community and where there was no evidence about the necessity for expiatory ceremonies, it was hardly right for the court to erect a barrier which the autonomy of the caste did not require, simply because, in some other community expiatory ceremonies were thought necessary.

G In *Rajagopal v. Armugam and Others*(⁵), the appellant was elected from a constituency reserved for members of the Scheduled Castes and the election was questioned on the ground that he was not a Hindu but a Christian and that he was not qualified to be elected from a constituency reserved for the Scheduled Casts. The

H (1) ILR 33 Madras 342.

(2) 67 Madras Law Journal 389.

(3) AIR 1937 Mad. 172.

(4) ILR 1940 Mad. 653.

(5) [1969] 1 S.C.R. 254.

court found that the appellant had become a Christian in 1949 and that from about 1967 onwards he certainly started professing the Hindu religion. The court however, held that the appellant had lost his Adi Dravida Hindu caste on embracing Christianity and, on the evidence before the court, it was not possible to hold that he had regained his caste on reconversion to Hinduism. The general question whether membership of a caste could be acquired by conversion or reconversion to Hinduism was not decided in the case,

Rajagopal, who succeeded at the election held in 1967, but whose election was set aside on the ground that he was a Christian and not a member of the Scheduled Castes and Arumugam who lost the election in 1967, but successfully challenged the election of Rajagopal by way of an election petition (vide *Rajagopal v. Arumugam*⁽¹⁾ referred to in the previous paragraph) were again contestants at the election held in 1972 from the same constituency reserved for members of the Scheduled Castes. Rajgopal was again successful in the election. His election was once more impeached by Arumugam. But this time Rajgopal fared better. His election was upheld first by the High Court and then by the Supreme Court: (1976 (3) S. C. R. 82) The Supreme Court held that the question whether Rajagopal embraced Christianity in 1949 and whether he was reconverted to Hinduism was concluded by the earlier decision of the court. The view of the High Court in the immediate case before them that on reconversion to Hinduism, he could revert to his original caste if he was accepted as such by the other members of the caste was accepted as correct. On the evidence, it was found that after reconversion to Hinduism he was recognised and accepted as a member of the Adi Dravida Hindu caste by the other members of the community. The court consisting of Chandrachud, J. (as he then was), Bhagwati and Sarkaria, JJ. noticed that it was not an infrequent phenomenon in South India for a person to continue to be regarded as belonging to his original caste even after conversion to Christianity. The decisions of the High Court of Andhra Pradesh in *Kothapalli Narasayya v. Jamma Jogi* and *K. Narasimha Reddy v. G. Bhupatti* were noticed. It was then observed:

"It cannot, therefore, be laid down as an absolute

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rule uniformly applicable in all cases that whenever a member of a caste is converted from Hinduism to Christianity, he loses his membership of the caste. It is true that ordinarily that on conversion to Christianity, he would cease to be a member of the caste, but that is not an invariable rule. It would depend on the structure of the caste and its rules and regulations. There are castes, particularly in South India, where the consequence does not follow on conversion since such castes comprise from Hindus and Christians”.

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The learned Judges then proceeded to consider the question whether Rajagopal could once again become a member of Adi Dravida caste even if it was assume that he had ceased to be such on conversion to Christianity. After referring to the Madras cases already noticed by us earlier, it was held :

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“These cases show that the consistent view taken in this country from the time Administrator-General of Madras v. Anandachari 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 has 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 csste 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

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“..... 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 cast."

In *Perumal Nader v. Ponnuswami*,⁽¹⁾ the question arose whether Annapazham, daughter of an Indian Christian and herself a Christian by birth, could be converted to Hinduism without the performance of any expiatory ceremonies? The court held that formal ceremony of purification or expiation was unnecessary. It was observed :

"A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism, But a *bona fide* intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion."

All the cases so far considered are from South India. To conclude the discussion, we may also refer to *Virmani v. Virmani*⁽²⁾ and *Ghatturbhuj Vithaldas Jasani v. Moreshwer Parashram & others*⁽³⁾ both of which are cases from elsewhere.

In *Virmani v. Virmani*, a Full Bench of the Lahore High Court following the decision of the Madras High Court in ILR 1940 MADRAS 653 held that it was not necessary for a Hindu convert to Christianity to undergo any expiatory ceremonies before he could revert to his original religion. His conduct and the circumstance that

(1) [1971] 3 S.C.R. 49.

(2) AIR 1943 LAHORE 51

(3) [1954] SCR 817.

A he was received by his community were sufficient to establish his reversion to Hinduism.

B In *Chatturbhuj's* case, a question arose whether a member of the Mahar caste which was one of the Scheduled Castes continued to be a member of the Mahar caste despite his conversion to the tenets Mahanubhava Panth, a sect, the founder of which repudiated the caste system and a multiplicity of Gods. Bose, J. after noticing the complexities brought in the train of conversion, observed :

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“Looked at from the secular point of view, there are three factors which have to be considered : (1) the reactions of the old body, (2) the intentions of the individual himself and (3) the rules of the new order. If the old order is tolerant of the new faith and sees no reason to outcaste or ex-communicate the convert and the individual himself desires and intends to retain his old social and political ties, the conversion is only nominal for all practical purposes and when we have to consider the legal and political rights of the old body the views of the new faith hardly matter. The new body is free to ostracise and outcaste the convert from its fold if he does not adhere to its tenets, but it can hardly claim the right to interfere in matters which concern the political rights of the old body when neither the old body nor the convert is seeking either legal or political favours from the new as opposed to purely spiritual advantage. On the other hand, if the convert has shown by his conduct and dealings that his break from the old order is so complete and final that he no longer regards himself as a member of the old body and there is no reconversion and readmittance to the old fold, it would be wrong to hold that he can nevertheless claim temporal privileges and political advantages which are special to the old order.”

H Bose, J. found that whatever the views of the founder of the Mahanubhava sect might have been about caste, it was evident that there had been no rigid adherence to them among his followers in later years. They had either changed their view or they had not been able to keep a tight enough control over converts who choose to retain their old caste customs. On a consideration of the evidence it was

found that the convert from the Mahar caste retained his caste even after conversion. A

These precedents, particularly those from South India, clearly establish that no particular ceremony is prescribed for conversion to Hinduism of a person who had earlier embraced another religion. Unless the practice of the caste makes it necessary, expiatory rites need be performed and, ordinarily, he regains his caste unless the community does not accept him. In fact, it may not be accurate to say that he regains his caste ; it may be more accurate to say that he never lost his caste in the first instance when he embraced another religion. The practice of caste however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deeprooted in the Indian people that its mark does not seem to disappear on conversion to a different religion. If it disappears, only to reappear on reconversion. The mark of caste does not seem to really disappear even after some generations after conversion. In Andhra Pradesh and in Tamil Nadu, there are several thousands of Christian families whose forefathers became Christians and who, though they profess the Christian religion, nonetheless observe the practice of Caste. There are Christian Reddies, Christian Kammas, Christian Nadars, Christian Adi-Andhras, Christian Adi Dravidas and so on. The practice of their caste is so rigorous that there are intermarriages with Hindus of the same caste but not with Christians of another caste. Now, if such a Christian becomes a Hindu, surely he will revert to his original caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the casts-fold and are once again assimilated in that fold. This appears to be particularly 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. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose fore-fathers 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. B
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Now, what are the facts of the present case ? The birth extract of the first respondent, Devarajan shows that his parents as Hindu Adi Dravidas. Through out his educational career, he was treated as a Hindu student belonging to the Scheduled Castes and was H

A awarded scholarships on that basis. The school records relating to his children also show them as Hindu Adi Dravidas. On one occasion in the admission register of a school, he was wrongly shown as Adi Dravida Christian, but it was corrected as Adi Dravida as far back as in 1948. He never attended a church. On the other hand, there is acceptable evidence to show that he was offering worship to Hindu deities in Hindu temples and that his marriage was performed according to Hindu custom and rites. Our attention was however, drawn to the finding of the Tribunal that the sisters of the first respondent professed Christianity as revealed by their service registers. Our attention was further invited to certain evidence indicating that the parents of the first respondent had become Christians and that the first respondent himself had been baptised when he was seven months old. Even assuming that the parents and sisters of the first respondent had become Christians and that the first respondent himself had been baptised when he was seven months old, we see no difficulty in holding, on the evidence in the case, that the first respondent had long since reverted to Hinduism and to the Adi Dravida caste. There is not a scrap of acceptable evidence to show that he ever professed Christianity after he came of age. On the other hand, every bit of evidence in the case shows that from his childhood, he was always practising Hinduism and was treated by everyone concerned as an Adi Dravidh. There is then the outstanding circumstance that the voters of the Rasipuram Parliamentary Constituency, reserved for the Scheduled Castes accepted his candidature for the reserved seat and elected him to the Lok Sabha twice. We have no doubt whatsoever that at all relevant times, he was a Hindu Adi Dravida and professed no religion other than Hinduism. The case was rightly decided by the Election Tribunal and the appeal is accordingly dismissed with costs.

H.S.K.

Appeal dismissed.