

(2014) 12 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 31973 of 2014

Giddi Shophyamma

APPELLANT

Vs

The District Level Scrutiny Committee

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 21

Citation : (2014) 12 AP CK 0013

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : S.R. Sanku, Advocate for the Appellant

Judgement

Nooty Ramamohana Rao, J.—The petitioner sought for a Writ of Prohibition declaring as redundant and unwarranted, illegal, arbitrary and violative of Articles 14, 15, 16 and 21 of the Constitution of India, the action of the 2nd respondent in directing the 1st respondent to enquire into the caste of the petitioner for purpose of disqualifying her to continue as the Sarpanch, Udimidi Village, P. Gannavaram Mandal, East Godavari District.

2. The petitioner has contested the elections for the office of the Sarpanch, Udimidi Village, P. Gannavaram Mandal, East Godavari District, which is reserved for Scheduled Caste Women category. She claimed that she belongs to the Scheduled Caste and contested in the elections that were held on 31.07.2013 and she was elected as Sarpanch at the election. The 7th respondent appears to have lodged a complaint on 08.11.2013 with the Collector and District Magistrate, East Godavari District, complaining that the writ petitioner in fact hails from Kottayam District of the State of Kerala and further, she was not a member belonging to the Scheduled Caste and hence, the election of the writ petitioner as Sarpanch of the village shall be declared as null and void. Entertaining the said complaint, the Collector through his proceedings dated 11.06.2014 directed the 1st respondent, the District Level Scrutiny Committee, East Godavari District to conduct an enquiry into the social status claimed by the

writ petitioner and pass necessary orders. That gave rise to the present writ petition.

3. It is the case of the petitioner that she migrated to the State of Andhra Pradesh in the year 1992 and worked as a teacher in the Bhadrachalam Agency area of Khammam District and thereafter settled at Udimidi Village, P. Gannavaram Mandal, East Godavari District in the year 1993. It was the further case of the petitioner that she was married to one Sri Giddi Rambabu in the year 1997, who is a member belonging to Scheduled Caste. It is the case of the writ petitioner that though in her school record maintained by Government D.V.H.S.S. School, Vechoor, Kottayam District, Kerala her caste was recorded as Roman Catholic, since she has been continuously staying at Udimidi Village, and also married a scheduled caste person and was also undergoing all the ordeals attached to the scheduled caste community, the said community has treated, considered and accepted her as one amongst them. The learned counsel for the petitioner would proceed to contend that since there was never any prohibition for people to migrate from one place to another and settle down and also there was no prohibition from getting married to one another irrespective of the caste, colour, creed, religion and region, the petitioner is entitled to be treated as a member belonging to the Scheduled caste. It is further contended that on her marriage, she becomes part of the family of her husband and accordingly becomes a member of the same caste, to which her husband belongs. Since there was never any dispute that her husband belongs to the Scheduled caste community, the petitioner cannot be treated any differently. Strong reliance was placed in support of the above plea upon the judgment of Supreme Court rendered in Vassamma Paul v. Cochin University and others.

4. Heard Sri S.R. Sanku, learned counsel for the writ petitioner and learned Assistant Government Pleader for Social Welfare.

5. There was seldom any restriction for one to move freely about in this country. Similarly was there any restriction for any two persons belonging to the opposite sexes getting married in accordance with law. Therefore, there is nothing wrong in the petitioner moving away from the state of Kerala and ultimately settling down in a village in East Godavari District of Andhra Pradesh. Her marrying a member belonging to the Schedule Caste in accordance with law is not objectionable either. If she has contested the election to the office of the Sarpanch of the village, provided it was not reserved for a woman candidate belonging to the Scheduled Caste, there would not have been any occasion for the Collector of the District to go about ascertaining her social status. Since the office of the Sarpanch, Udimidi village is exclusively reserved and set apart for a woman candidate belonging to the Scheduled Caste, candidates who do not answer the said social status are ineligible to contest the election itself and they cannot get elected at all. The fact that the writ petitioner has been chosen to be the Sarpanch of the village by the electorate, no doubt reflects the popularity enjoyed by her and the image of the writ petitioner, but that is not the only thing

that is needed, hence the Collector has started taking steps for ascertaining her social status. In fact that was the mandate entrusted to him by the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993. One of the objectives behind the said legislation being to prevent the concessions, benefits and special provisions made for the advancement of Scheduled Caste, Scheduled Tribe and Backward classes from being high jacked by persons who do not belong to the Scheduled Caste, Scheduled Tribe or Backward Classes.

6. Sri S.R. Sanku, learned counsel for the petitioner, has placed strong reliance upon the judgment rendered by the Supreme Court in Valsamma Pauls case (referred supra) and in particular Paragraph No. 31 thereof in support of his plea that the writ petitioner on marriage became a member of the family of her husband and thereby she became a member of the Scheduled Caste, to which she moved and consequently she cannot be treated differently from her husband any longer. It is true that in Paragraph No. 31 of Valsamma Pauls case (referred supra), it has been observed as under:

It is well settled law from Bhoobum Moyee Debia v. Ram kishore Acharj Chowdhary, ((1865) 10 MIA 279 : 3 WR 15) that judiciary recognised a century and half ago that a husband and wife are one under Hindu law and so long as the wife survives she is half of the husband. She is "Sapinda" of her husband as held in Lullobhoy Bappoobhoy Cassidass Moolchund v. Cassibai ((1879-80) 7 IA 212). It would, therefore, be clear that be it either under the Canon law or the Hindu law, on marriage wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage, becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

(Emphasis is brought out)

7. But, it was very important to note that, subsequent to Valsamma Pauls case, the very question as to whether by virtue of marriage, a person would become a member of the Scheduled Caste has fallen for consideration before the Supreme Court, on more than once occasion. The Supreme Court in Rameshbhai Dabhai Naika Vs. State of Gujarat and Others, has reviewed several earlier judgments and analysed the ratio of Valsamma Pauls case in that regard. In paragraph No. 9 of Rameshbhais case the Supreme Court noticed the principle enunciated earlier in Anjan Kumar Vs. Union of India (UOI) and Others, . In paragraph No. 10 of the judgment, this is what has been spelt out by the Supreme Court.

8. It is, thus, clear that it is wrong and incorrect to read Valsamma, Punit Rai and Anjan Kumar as laying down the rule that in an inter-caste marriage or a marriage between a tribal and a non-tribal, the child must always be deemed to take his/her caste from the father regardless of the attending facts and

circumstances of each case. Now, we propose to consider why the observation in Valsamma to the effect that an inter-caste marriage or a marriage between a tribal and a non-tribal the woman becomes a member of the family of her husband and takes her husband's caste (Paragraph 31 of the judgment) is not the ratio of that decision and more importantly what inequitable and anomalous results would follow if that proposition is taken to its next step to hold that the offspring of such a marriage would in all cases take the caste from the father.

9. Then, in paragraph No. 14, the opinion was firmed up as under:

The view expressed in Valsamma that in inter-caste marriage or in a marriage between a tribal and a non-tribal the woman gets transplanted into the family of her husband and takes her husband's caste is clearly not in accord with the view expressed by the Constitution Bench of the Court in Shri V.V. Giri Vs. Dippala Suri Dora and Others, that it is well nigh impossible to break or even to relax the inflexible and exclusive character of the caste system.

(Emphasis all through is mine)

10. In paragraph No. 16, the Supreme Court brought out the ratio in the following words.

11. In light of the discussion made above it is clear that the view expressed in Paragraph 31 of the Valsamma judgment that in an inter-caste marriage or a marriage between a tribal and a non-tribal the woman must in all cases take her caste from the husband, as a rule of Constitutional Law is a proposition, the correctness of which is not free from doubt. And in any case it is not the ratio of the Valsamma decision and does not make a binding precedent.

12. It is also clear to us that taking it to the next logical step and to hold that the off-spring of such a marriage would in all cases get his/her caste from the father is bound to give rise to serious problems. Take for instance the case of a tribal woman getting married to a forward caste man and who is widowed or is abandoned by the husband shortly after marriage. She goes back to her people and the community carrying with her an infant or may be a child still in the womb. The child is born in the community from where her mother came and to which she went back and is brought up as the member of that community suffering all the deprivations, humiliations, disabilities and handicaps as a member of the community. Can it still be said that the child would have the caste of his father and, therefore, not entitled to any benefits, privileges or protections sanctioned by the Constitution.

13. If the earlier judgment of the Supreme Court has been understood in a particular manner, by a subsequent judgment of the Supreme Court, and the earlier judgment was explained, that is only the manner in which the earlier Judgment of the Supreme Court is liable to be understood.

14. In view of the authoritative pronouncement of the Supreme Court in Anjan kumars case, Rameshbhai Dabhai Naikas case (referred supra), the reliance

placed by Sri S.R. Sanku, learned counsel for the petitioner, upon paragraph No. 31 of the Valsamma Pauls case (referred supra) is a misplaced one.

15. It is apt to remember that the decision of the Court takes its colour from the question involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain the true principles laid down by the decision of the Supreme Court and not to pick out words or sentences from the Judgment divorced from context of the questions under consideration by the Court, to support their reasoning. (Commissioner of Income-tax v. Sun Engineering Co. Ltd.).

16. Hence, the writ petition stands dismissed. No order as to costs. All the miscellaneous petitions pending in this writ petition shall stand closed.