

(2018) 06 BOM CK 0114
In the Bombay High Court
Case No : WRIT PETITION NO. 2950 OF 2018

MANOJ PARMESHWAR SIDAM

APPELLANT

Vs

STATE OF MAHARASHTRA, THROUGH DISTRICT ELECTION
OFFICER AND DISTRICT COLLECTOR, GADCHIROLI AND
OTHER

RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
— Section 341B1(4), 341B1(6)
Representation of the People Act, 1951 — Section 5(a), 81, 100(1)(a), 125A
Constitution of India, 1950 — Article 243ZG(b)

Citation : (2018) 06 BOM CK 0114

Hon'ble Judges : B.P.DHARMADHIKARI, J;Z.A.HAQ, J

Bench : Division Bench

Advocate : A.K. Shah, N.R.Patil, V.N.Morande, M.P.Khajanchi

Final Decision : Dismissed

Judgement

Z.A.Haq, J

1. Heard.

2. RULE.

3. Considering the nature of controversy, the writ petition is taken up for final hearing.

4. The petitioner has challenged the decision of the respondent No.2 Election Officer by which the nomination form of the respondent No.3 for the post

of President of Kurkheda Nagar Panchayat is accepted. According to the petitioner, the post of President Kurkheda Nagar Panchayat is reserved

for Scheduled Tribe candidate and the respondent No.3, who originally belonged to Gond Scheduled Tribe accepted Islam after her marriage and

therefore, she ceased to belong to Gond Scheduled Tribe, and she is not eligible to contest the election as Scheduled Tribe candidate.Â

5. It is undisputed that the petitioner belongs to Scheduled Tribe, is a member of Kurkheda Nagar Panchayat and presently Chairman of Health, Sanitation and Nutrition Committee.Â

It is undisputed that the respondent No.3 originally belonged to Gond Scheduled Tribe and she married Tayar Mugal (a Muslim) on 9th April, 2010.Â

It is undisputed that before marriage, name of the respondent No.3 was â?? Sharda Deorao Uikeyâ? and the Scheduled Tribe Certificate Scrutiny

Committee, Gadchiroli Division issued certificate of validity on 26th March, 2010 to the effect that she belonged to Gond Scheduled Tribe.Â It is

admitted fact that after marriage, the respondent No.3 has changed her name as â??Smt. Shahida Tabassumâ? and for this she followed the

prescribed procedure and had submitted an affidavit dated 13th April, 2015 stating that before marriage the caste of the respondent No.3 was Gond,

however, after marriage she has become a Muslim (Musalman).Â

6. The point which arises for consideration is, whether the respondent No.3 is entitled to contest the election as Scheduled Tribe candidate for the post reserved for Scheduled Tribe person.Â

7. The advocate for the respondent No.3 has raised preliminary objection to the maintainability of the writ petition on the ground that Article 243Â?

ZG(b) of the Constitution of India bars any Court, except the Court/ Tribunal having jurisdiction to entertain and decide the election petition, from

entertaining any challenge to the election matters.Â The advocate for the respondent No.3 has relied on the provisions of Section 341BÂ1 (4) of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as â??the Act of 1965â?) and has

argued that appeal is provided before the Regional Director of the Municipal Administration to challenge the decision of the Returning Officer,

accepting or rejecting the nomination paper and this appeal is required to be filed within 48 hours from intimation of such decision.Â Relying on subÂ?

section (6) of Section 341BÂ1 of the Act of 1965, it is submitted that even after the elections are held and if occasion arises, the petitioner can raise

dispute regarding election of respondent No.3 as President of Nagar Panchayat, before the State Government.Â

Â It is not in dispute that this writ petition is filed within forty eight hours from the intimation of the decision of the respondent No.2 Returning Officer

to accept the nomination form of the respondent No.3.Â

8. The advocate for the petitioner has submitted that the affidavit sworn by the respondent No.3 at the time of changing her name shows unequivocal

declaration made by the respondent No.3 that on her marriage with a Muslim man, she ceased to belong to Gond Tribe and has embraced Islam and in

view of this admitted fact, this Court should examine the legality of the impugned decision.Â The learned advocate for the petitioner has relied on the

judgment given in the case ofÂ K. Venkatachalam Vs. A. Swamickan, reported in (1999)4 SCC 526 to urge that in the circumstances like the

present one, this Court would be justified in exercising the extraordinary jurisdiction and prevent the fraud attempted by the respondents on the

Constitution.

Â Considering the facts of the case and the proposition laid down in the judgment given in the case of K. Venkatachalam (supra) we overrule the

preliminary objection taken by the advocate for the respondent No.3, to the maintainability of the petition.Â

9. On merits, the submission on behalf of the petitioner is that the respondent No.3 has is unequivocally revoked her affinity with Gond Scheduled

Tribe and has embraced Islam declaring that now she is Muslim, and in these facts she has lost her status as Scheduled Tribe person and is not

entitled for any benefits available to Scheduled Tribe persons.

Â Â To support the arguments, the learned advocate for the petitioner has relied on the following judgments:

i) Judgment given in the case of Kailash Sonkar Vs. Maya Devi, reported in (1984) 2 SCC 91;

ii) Judgment given in the case of Mohd. Sadique Vs. Darbara Singh Guru, reported in (2016) 11 SCC 617;

iii) Judgment given by Madras High Court in the case of S. Yasmine Vs. The Secretary, Tamil Nadu Public Service Commission, reported in 2013 (4)

CTC 53;

10. The submission on behalf of the respondent No.3 is that though the respondent No.3 has changed her name and has sworn an affidavit on which

the petitioner is relying, the respondent No.3 does not lose her affinity with Gond

Scheduled Tribe.Â It is argued that the social status of the person is determined on the basis of birth and it does not change on marriage. To support the argument, the advocate for the respondent No.3 has relied on the following judgments:

- i) Judgment given in the case of V.V.Giri Vs. D. Suri Dora & oth, reported in AIR 1959 SC 1318;
- ii) Judgment given in the case of Rajendra Vs. State of Mah., reported in 2010 (2) Mh.L.J. 198;
- iii) Judgment given in the case of M. Chandra Vs. M. Thangamuthu, reported in (2010) 9 SCC 712;
- iv) Judgment given in the case of Kailash Sonkar Vs. Maya Devi, reported in (1984) 2 SCC 91;
- v) Judgment given in the case of Mohd. Sadique Vs. Darbara Singh Guru, reported in (2016) 11 SCC 617;
- vi) Judgment given in the case of Rameshbhai Dabhai Naika Vs. State of Gujarat, reported in (2012) 3 SCC 400;

11. In the case of Rajendra Shrivastava (supra) the Full Bench of this Court has laid down that when a woman born in a Scheduled Caste family or

Scheduled Tribe family marries to a person belonging to a forward caste, her caste by birth does not change by virtue of the marriage.Â It is laid

down that the person born as a member of the Scheduled Caste or a Scheduled Tribe has to suffer from disadvantages, disabilities and indignities, only

by virtue of belonging to a particular caste which he or she acquires involuntarily on birth and the sufferings of such a person by virtue of the caste are

not wiped out by marriage with a person belonging to a forward caste.Â It is laid down that the label attached to the person born in scheduled caste

or scheduled tribe continues notwithstanding the marriage.Â

Â The judgment given in the case of Rameshbhai Dabhai Naika(supra) deals with the rights of a child born to a Scheduled Tribe mother and forward

caste father. Though this judgment may guide us in deciding the controversy we are dealing with, in our view the judgment will not have direct impact

on the issue under consideration.

12. In the judgment given in the case of M. Chandra the challenge was that M. Chandra who had contested the election for the seat reserved for

Scheduled Caste candidate, was not a scheduled caste person.Â M. Chandra

claimed that her father was Christian and her mother was Hindu, her father had subsequently re-married and deserted her mother when she was a child, she was brought by her mother at her sister's house and their ties with M. Chandra's father were severed. M. Chandra claimed that she was converted to Hinduism in Arya Samaj in 1994 and on 23/01/1995 she married Murugan (who had converted to Hinduism in the year 1975) and Murugan belonged to Pallan caste and after marriage she got the certificate that she belonged to Hindu Pallan community which is recognized as Scheduled Caste in the state of Tamil Nadu. The election of M. Chandra was challenged by filing petition under Section 81 read with Sections 5(a), 100(1)(a) and 125A of the Representation of the People Act, 1951. The High Court allowed the election petition. The High Court concluded that M. Chandra belonged to Pallan Christian community and she could not have contested the assembly elections for the seat reserved for Scheduled Caste community. The judgment passed by High Court was challenged by M. Chandra before the Hon'ble Supreme Court. After scanning the evidence on record, the Hon'ble Supreme Court recorded that the election petitioner in that case had not produced sufficient evidence to prove that M. Chandra professed Christianity and was not belonging to Scheduled Caste.

13. In the judgment given by the Constitution Bench in the case of V.V. Giri (supra) the main issue which fell for consideration was whether the person belonging to Scheduled Tribe and who claimed the benefit of the reserved seat was precluded from contesting the election, if necessary for the general seat in Double Member Constituency. While examining this issue, the Hon'ble Supreme Court has discussed on the point as to whether the person belonging to Scheduled Caste loses his caste status and ceases to be a member of Scheduled Caste on acquiring status as Kshatriya. While discussing on this point, the Hon'ble Supreme Court has observed that unilateral act of a person cannot be considered to determine the claim of such person to higher caste status.

14. In the judgment given in the case of Kailash Sonkar (by Three Judge Bench), we find that para No.34 is relevant for considering the controversy before us, and reads thus:

“34. In our opinion, when a person is converted to Christianity or some other

religion the original caste remains under eclipse and as soon as during his/her lifetime the person is reconverted to the original religion the eclipse disappears and the caste automatically revives.Â Whether or not the revival of the caste depends on the will and discretion of the members of the community of the caste is a question on which we refrain from giving any opinion because in the instant case there is overwhelming evidence to show that the respondent was accepted by the community of her original Katia caste.Â Even so, if the fact of the acceptance by the members of the community is made a condition precedent to the revival of the caste, it would lead to grave consequences and unnecessary exploitation, sometimes motivated by political considerations. Of course, if apart from the oral views of the community there is any recognised documentary proof of a custom or code of conduct or rule of law binding on a particular caste, it may be necessary to insist on the consent of the members of the community, otherwise in normal circumstances the case would revive by applying the principles of doctrine of eclipse.Â We might pause here to add a rider to what we have said, i.e., whether it appears that the person reconverted to the old religion had been converted to Christianity since several generations, it may be difficult to apply the doctrine of eclipse to the revival of caste.Â However, that question does not arise here.â??

Â The proposition laid down in the judgments given in the case of V.V.Giri and M. Chandra (supra) and the other judgments relied upon by the advocates for the respondent No.3 is also in consonance with the proposition laid down in the judgment given in the case of Kailash Sonkar (supra).Â

Â The judgment given by the Constitution Bench of the Hon'ble Supreme Court in the case of Guntur Medical College Vs. V. Mohan Rao, reported in (1976) 3 SCC 411 and the judgment given by the Hon'ble Supreme Court (by Bench of three Hon'ble Judges) in the case of State of Kerala Vs. Chandramohanan, reported in (2004)3 SCC 429 lay down that whether the person ceases to be a member of Scheduled Tribe/ Scheduled Caste by change of religion would depend on the facts of each case.

15. After examining the material on record, we find that the respondent No.3 after marriage has changed her name and for that purpose has sworn the affidavit dated 13th April, 2015 stating that before marriage her caste was 'Gond' but after marriage her caste is 'Musalman'.Â Though the

respondent No.3 submitted that the petitioner has not been able to prove that the respondent No.3 is not following the rituals of Gond Scheduled Tribe

and is following the rituals of Islam after marriage and therefore, the challenge, as raised by the petitioner, cannot be accepted, we are not inclined to

accept this submission. In our view, the burden was on the respondent No.3 to show that even after marriage she is not following the rituals of Islam

but continues to follow rituals of Gond Scheduled Tribe, and the respondent No.3 has failed to discharge this burden.Â In the facts of the case and

considering the proposition laid down in the judgment given in the case of Kailash Sonkar, we uphold the challenge of the petitioner.

16. The submission made on behalf of the respondent No.3 that the petition is liable to be dismissed for suppression of relevant facts and misleading

statements also cannot be accepted.Â The advocate for the respondent No.3 has argued that the petitioner has pleaded in the writ petition that the

respondent No.3 had contested the election for the seat of Member of Nagar Panchayat as open category candidate and this statement is made to

mislead the Court, the factual position is being that the respondent No.3 contested the election for the seat of member of Nagar Panchayat reserved

for Scheduled Tribe candidate.Â In our view, the wrong submission on behalf of the petitioner on this point is not relevant for adjudication of the

substantive issue and therefore, we are of the view that the petition need not be dismissed on this point.Â

17. In view of our conclusions recorded above, the following order is passed:

i) It is held that the respondent No.3 is not eligible to contest the election for the post of President of Kurkheda Nagar Panchayat as scheduled tribe

candidate.Â

ii) The decision of the respondent No.2ÂElection Officer to accept the nomination form of the respondent No.3 as Scheduled Tribe candidate for the

post of President of Kurkheda Nagar Panchayat is quashed.Â

iii) The Respondent No.2ÂElection Officer is directed to reject the nomination form of the respondent No.3 for the post of President, Kurkheda Nagar

Panchayat, election.Â

Rule is made absolute in the above terms.Â In the circumstances, the parties to bear their own costs.

At this stage, Advocate Shri Khajanchi seeks continuation of the interim order for

a period of three weeks more.

The request is being strongly opposed by the petitioners.

However, in the interest of justice, we continue that interim order for a period of three weeks from today.Â It shall cease to operate, automatically, thereafter.Â