

(1998) 01 MAD CK 0082
In the Madras High Court

S. Vimala

APPELLANT

Vs

The Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Constitution of India, 1950 — Article 16, 17

Citation : (1998) 1 MLJ 682 : (1999) WritLR 609

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of declaration declaring the order of preference referred under Clause 3.5 (viii) if the prospectus issued by the 2nd respondent for the admission of candidates in Professional courses (Medical/Dental/Paramedical) 1997-98 as illegal and unconstitutional, and consequently direct the 1st respondent to treat candidates born of intercaste marriage as a single homogenous class and therefrom select candidates purely based on their merits without giving any preference as set out in clause 3.5 (viii) of the prospectus.

2. The petitioner herein is a daughter of one Sambamoorthy, who belongs to Vanniar community. It is said that the said community is notified as Most Backward community by the Government of Tamil Nadu. Her mother is a converted Christian Adi Dravida, which is classified as Scheduled Cast community. They got married in 1977. The petitioner wrote the +2 examinations in the year 1996 and also appeared for the improvement examinations in the year 1997 and took up professional courses entrance test conducted by Anna University. She secured 173.20 marks out of 300. In the +2 examinations she secured 993 marks out of 1200 marks. It is her case that she applied for admission to the professional colleges under special category reserved for children born of intercaste marriage. But admission was denied to her. It is her case that there is no order of preference to the children born of intercaste marriage, which according to her is illegal and unconstitutional. According to her,

all children born out of intercaste marriage should be treated as one class, and preference given on the basis of the three categories is invalid.

3. Learned Additional Government Pleader as well as the Special Government Pleader were also heard. 4. I do think that the petitioner is right in making such a submission. I am bound by the decision of a Divisional Bench of this Court in W.A. No. 209 of 1995 judgment dated 10.3.1995, wherein the same question was considered. In paragraphs 6 and 7 of the judgment, this question was fully considered, and the Division Bench has held thus:

6. The contention of the learned Counsel that such a classification is arbitrary and has no nexus to the object, as such it is violative of Article 14 of the Constitution, cannot at all be appreciated. It may be pointed out here that the children born of inter caste marriage between S.C. and S.T. and most backward class and denotified communities, will be having the benefit of reservation made either for the most backward community or for S.C. and S.T. depending upon the way of life in which they are brought up. Similarly the children born of inter caste marriage between S.C. and S.T. and backward communities also, will have the reservation depending upon the way of life in which they are brought up, whereas the children born of inter caste marriages between S.C. and S.T. and forward communities will not have any benefit of such reservation, as one of the parties to the marriage is from a forward community. If all are treated alike, then, the inter caste marriage that has taken place between the S.C. and S.T. and forward community which removed the imbalance between the communities in a greater measure, will not be in any way advantageous. Further, the object of the reservation is also to encourage intercaste marriage between S.C. and S.T. and forward communities. As the classification is based on the intelligible differentia and this differentia has rational relation or nexus to the object sought to be achieved, viz., to encourage intercaste marriage between S.C. and S.T. and forward community, it is not possible to hold that the classification suffers from the vices of Article 14 of the Constitution.

7. In fact, the reservation made on the basis of the intercaste marriage for admission to educational institutions, came up for consideration before this Court in S. Hari Ganesh and Another Vs. State of Tamil Nadu and Another, . In that case, preference was given to a child born of inter caste marriage between S.C. and S.T. and forward community over the children born of intercaste marriages between S.C. and S.T. and most backward communities. However, in the later years, it appears that the most backward classes and backward classes have been treated separately and separate reservations are made. Therefore, the present notification makes three categories instead of two categories. While" dealing with the validity of such preference with reference to Article 14 of the Constitution, a Division Bench of this Court in the aforesaid case held as follows:

Before examining the legal content in the arguments of Mr. Shanmugham, we may look at the matter from a general perspective. The practically speaking, society is expected to view every marriage as a lawful union between a man and

a woman and creating marital rights and obligations between them, besides legal rights of inheritance to them and their offsprings to the spouses themselves, their union by matrimony is an endearing fashion of hearts till death parts them as under. Thus, conceptually all marriages may seem alike and may call for recognition and respect. But the ways of the world and the hard facts of life call for realistic perspectives. In a country like ours; where the caste system has taken deep roots for centuries and created unsurmountable social barrier, the very mention of the word "marriage" brings to the mind of concept of an alliance between a man and a woman of the same caste. The mental picture does not stop with that, but goes further and conjures visions of an alliance between two families where the economic levels, cultural standards and food habits are parityoriented. Consequently, even in a marriage between members of the same caste, if disparities are noticed in the levels of wealth, social standing, cultural standards, religious tenets and food habits of the spouses, the marriage arouses suspicion and sarcastic comments. In such a society, if a marriage takes place between a member of the Forward Community or Backward Class, on the one hand and a member of the Scheduled Caste or Scheduled Tribe, on the other, it is not only starting event, but a revolutionary alliance. The reason for it, it is needless to say, is because of the pernicious castesystem which has dubbed the members of the Scheduled Caste/Scheduled Tribe as untouchables and thrown them into the abysmal depths of society. It cannot therefore be said that all intercaste marriages are on the same plane and that a marriage between a member of the Forward Community or Backward Class with a member of the Scheduled Caste or Scheduled Tribe is not a greater social breakthrough than a marriage of a member of the Forward community with a member of the Backward Class. Coming now to the legal aspect of the matter, we have to bear in mind Article 17 and 16 of the Constitution. While Under Article 17, untouchability is abolished and its practice in any form is forbidden, under Article 46 the State is obligated to promote with special care the educational and economic interests of the weaker sections of the people and especially those of the Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. The State is, therefore, bound legally and morally to give special recognition to marriage of the so called caste Hindus with members of the Scheduled Castes and Scheduled Tribes because such marriages remove the imbalance and inequalities in society to a greater degree than marriages between members of the Forward Communities and members of the Backward Class. Any welfare and secular State, committed to the abolition of untouchability and to the ushering in of an egalitarian society rid of caste and communal barriers, has necessarily to give greater weightage and preference to a marriage in which a member of a Forward Community or a Backward Class marries a member of a Scheduled Caste or Scheduled Tribe. It therefore follows that thought the State has reserved twelve seats under the category of children born of inter caste marriages, it is entitled to give preference to (i) children born of intercaste marriages between members of scheduled Castes/Scheduled Tribes and

members of Forward Communities and (ii) children born of intercaste marriages between members of the Scheduled Castes/Scheduled Tribes and members of Most Backward Class/Backward Class. In fact, the category of reservation is essentially in the nature of children born of intercaste Hindus and Hindus belonging to the Scheduled Castes/Scheduled Tribes. The Status of the children born of such marriages is undoubtedly different from the status given by society to children born of intercaste marriages between members belonging to the Forward communities and Backward classes. In such circumstances, there is no scope for arguing that Clauses 1 and 2 of category (iv) offend Article 14 of the Constitution. " We are in agreement with the view expressed in the aforesaid decision.

5. In view of the binding decision, the contention of the petitioner is rejected and consequently, the writ petition is dismissed. The connected W.M.P., is also dismissed.