

(1992) 09 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 10934 of 1992

Sapna Jacob

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 341
Hindu Succession Act, 1956 — Section 2

Citation : AIR 1993 Ker 75

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : K.V. Kumaran, for the Appellant; K. Thankappan, for the Respondent

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, J.—The petitioner seeks to quash Ext.P13 report and Ext.P20 memo and to issue a writ of mandamus or other appropriate writ, order or direction to the first respondent to keep one seat for admission to Medical/ Agricultural Courses, 1992-93 in the Scheduled Caste quota.

2. The original Petition has been filed by Sapna Jacob, a minor girl represented by her mother, who claims to be a member of the Scheduled Caste being a Hindu by religion and Pulaya by caste. Petitioner contends that her mother belongs to Pulaya caste and Hindu religion. Her mother while working as Telephone operator in the Indian Posts and Telegraphy Department got acquainted with an employee in the same Department who belonged to Christian religion and they got married on 18-11-1973. Petitioner Sapna Jacob and younger brother Jijo Jacob were born in that wedlock. According to the petitioner even after the marriage of the petitioner's mother she continued to be a member of the Hindu religion and has been offering prayers and conducting poojas as a Hindu and the petitioner's mother never changed her religion. Petitioner and her mother were not baptised and they had not converted to Christianity. Petitioner being a child born on an inter-caste marriage between a Scheduled Caste and a non-Scheduled Caste, is a

member of the Scheduled Caste.

3. Along with the Original Petition the petitioner produced the copy of the S.S.L.C. Book (Page-3) and the certificate issued by the Tahsildar, Kannur and also the letter issued by the Vice-President, Kerala Harijan Samajam to prove that the petitioner is a member of the Scheduled Caste. The petitioner also relied on Ext.P7 order, issued by the Government of Kerala, in support of her contention that she is a member of the Scheduled Caste.

4. For the purpose of the provisions of the Indian Constitution a Scheduled Caste has been defined under Article 341 of the Constitution. It is as follows :

341. Scheduled Castes. -- (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification:

It is correct to say that a member of Pulaya caste belonging to Hindu community is included in the notification issued by the President under Article 341 of the Constitution. So as per the notification issued by the President of India a member of the Pulaya Caste belonging to Hindu, Sikh, Jaina or Budhist religion alone would become a Scheduled Caste.

5. The crucial question to be decided is whether the petitioner is a member of Hindu religion. Petitioner claims to be a Hindu on the basis that her mother was not converted to Christianity on her marriage with V. M. Jacob. But the petitioner has no case that she has been leading a Hindu way of life and that she was ever accepted by the Hindu community as their member. In an illuminating judgment rendered by his Lordship the Chief Justice Gajendragadkar in *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, it is held :

"(39) Whilst we are dealing with this broad and comprehensive aspect of Hindu religion, it may be permissible to enquire what, according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of Births and Rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while other extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the

performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred.

(40) Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory, said Tilak:

"Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse; and realisation of the truth that the number of Gods to be worshipped is large, that in deed is the distinguishing feature of Hindu religion. This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee, says Toynbee: "When we pass from the place of social practice to the place of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary".

(41) The Constitution-makers were fully conscious of this broad and comprehensive character of Hindu religion, and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Article 25 has made it clear that in Sub-clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly".

In *C.M. Arumugam Vs. S. Rajgopal and Others*, , the Supreme Court considered, the question whether the petitioner therein, who was Christian convert from Hinduism (who originally belonged to a Scheduled Caste) could claim the benefit of reservation of seats in a Medical College for Scheduled Castes, after embracing Hinduism, Bhagwati, J. as he then was held that the principles laid down in *C.M. Arumugam Vs. S. Rajgopal and Others*, are applicable and the question is whether the petitioner again became a member of the caste in which he was born, and to which he belonged before conversion to another religion, provided that the members of the caste accepted him as a member. Of course, these observations were made in a case of conversion to Christianity and later reconversion to Hinduism. But these observations are equally applicable to show whether the petitioner was leading a Hindu way of life and the members of that religion accepted her as member of that community.

6. It is also important to note the definition of the expression "Hindu" in the various enactments such as Hindu Marriage Act, Hindu Adoptions and Maintenance Act and Hindu Succession Act. In all these enactments the expression "Hindu" has been defined in the same manner. Under Explanation to Section 2 of the Hindu Succession Act, it is stated that the following persons are Hindus, Buddhists Jainas or Sikhs by religion, as the case may be : --

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhists, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or reconvert to the Hindu, Buddhists, Jaina or Sikh religion.

The petitioner at the most can claim to come under Explanation (b) of Section 2 of Hindu Succession Act. But in order to avail the benefit of that clause it must be further proved that she was brought up as member of Hindu community. In order to prove that the petitioner was a member of the Hindu community she must have established that there was a bona fide intention to be converted to the a Hindu faith accompanied by conduct or unequivocally expressing that intention. It is true that no formal ceremony of purification or expiation is necessary to effectuate conversion. The petitioner is admittedly the daughter of a Jacobite Christain. So by birth she is a Christian. A convert must embrace Hinduism and follow the cultural system and tradition of that religion and should take the Hindu mode of life. It may be true that the court cannot test or guage the sincerity of religious belief; or where there is no question of the genuineness of a person's belief in a certain religion, the court cannot measure its depth or determine whether it is an intelligent conviction or ignorant and superficial fancy. But a court can find the true intention of men lying behind their acts and can certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end. In the instant case the petitioner's mother after marrying V, M. Jacob changed her name as Uma Jacob. The petitioner's name is Sapna Jacob, admittedly a Christian name. There is nothing in evidence to show that the petitioner ever led a Hindu mode of life. The only ground on which the petitioner claims the benefit of Scheduled Caste is that her mother is a Scheduled Caste.

7. The petitioner relied on the various documents produced by her. In the caste certificate issued by the tahsildar instead of the petitioner being described as the daughter of V. M. Jacob she is described, as the daughter of Uma. Petitioner's father and natural gurdian is V. M. Jacob. However, in the S.S.L.C. Book also her mother is shown as her guardian. So it is clear that the certificate was obtained by not furnishing true and relevant facts. The evidence collected by KIRTADS to prepare Ext. P 13 Report also shows that the petitioner and the other members

of the family have been leading a Christian life. So the petitioner cannot be said to be a Scheduled Caste.

8. Lastly, the petitioner relied on Ext. P 7 Government Order issued on 25-1-1977. The Government order says that with a view to encourage inter-caste marriage, the children born of inter-caste marriages will be allowed all educational, concessions given to Scheduled Caste or Scheduled Tribe communities provided either the father or mother belongs to a Scheduled Caste or Scheduled Tribe community. Ext. P 7 has been issued to encourage inter-caste marriage and concessions now being given to the Scheduled Castes are extended to the children of inter-caste marriages. That does not mean that the children born in the wedlock of such marriages would become Scheduled Castes as envisaged under the provisions of the Indian Constitution. The reservation for admission to colleges and employment is a constitutional right and if one seeks benefit under the reservation he has to be a member of the Scheduled Caste as defined under Article 341 of the Constitution of India.

9. The petitioner being the daughter of V. M. Jacob, a Jacobite Christian, is neither Pulaya by caste nor Hindu by birth. Such a person is not Scheduled Caste and by Ext. P 7 executive order status of Scheduled Caste cannot be conferred on such person. To be a Scheduled Caste, one must be a member of the caste included in the list of Scheduled Castes appended to the Notification issued by President of India and that he should profess Hinduism, Sikhism, Jainism or Buddhist religion. So the petitioner is not entitled to the reliefs prayed for in the Original Petition. The Original Petition is dismissed in limine.