
(2014) 11 MAD CK 0508

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 284 of 2009

The Managing Director

APPELLANT

Vs

Parameswari

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0508

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned.

2. Since the issues involved in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

3. The writ petition, in W.P. No.32651 of 2013, has been filed by the petitioner, as a public interest litigation, praying that this Court may be pleased to issue appropriate directions to the Tahsildars concerned, to issue community certificates to the Scheduled Caste converts to Buddhism, by prefixing their religion with the caste name and to specify the serial number given in the Constitution (Scheduled Castes) Order, 1950, as amended in the year, 1990.

4. The writ petition, in W.P. No.33319 of 2013, has been filed by the petitioner praying that this Court may be pleased to issue a writ of Certiorarified Mandamus to call for and quash the impugned order passed by the third respondent, dated 4.10.2013 and consequently, to direct the third respondent to issue community certificates to the petitioner and to the members of his family stating that they belong to Buddhist Adi Dravidar, within the time frame specified by this Court.

5. The brief facts of the case, as stated by the petitioner, are as follows:

5.1. The petitioner has stated that he hails from Suddhamali village, in Tirunelveli District. He was born, on 25.4.1971. The petitioner's parents belong

to Hindu Adi Dravidar community, which is a Scheduled Caste community. On 17.5.2002, the petitioner had married S.Anusuya, who belongs to Hindu Parayan Community. They have two children out of the wedlock, namely, Thaarangai and Thaarini.

5.2. The petitioner has further stated that he has been working as an Assistant Professor of English at the Ramakrishna Mission Vivekananda college, Mylapore, Chennai, from 24.7.2000.

5.3. It has been further stated that the petitioner and the members of his family had embraced Buddhism, from 15.8.2012, and their conversion to Buddhism had been notified in the Tamil Nadu Government Gazette, in its issues, dated 22.8.2012 and 29.8.2012. While so, the petitioner had made an application, dated 21.8.2013, to the Tahsildar, Shozhinganallur, for the issuance of community certificates to the members of the petitioner's family, stating that they belong to Buddhist Adi Dravidar community. However, the third respondent had passed the impugned order, dated 4.10.2013, stating that there is no caste, as Buddhist Adi Dravidar, in the Government order published in the Government Gazette concerned and therefore, the request of the petitioner had been rejected.

6. The learned counsel appearing on behalf of the petitioner had submitted that the third respondent, while passing the impugned order, dated 4.10.2013, had failed to appreciate the fact that the members of the Scheduled Caste community, who get converted to Buddhism, are entitled to the benefits of reservation, by virtue of the Constitution (Scheduled Castes) Order (Amendment) Act, 1990, dated 4.6.1990. The impugned order passed by the third respondent is contrary to the decision of the First Bench of this Court, reported in Elangovan Vs. Tamil Nadu Public Service Commission (2007 (1) MLJ 843).

7. It has also been stated that the first respondent had issued a Government Order, in G.O. Ms.No.1597, dated 27.9.1990, on the basis of the letter issued by the Union Government, in letter No. 12016/22/90-SCD (R.Cell), dated 31.7.1990. The third respondent had erred in rejecting the request of the petitioner for the issuance of the community certificates stating that the petitioner and the members of his family belong to Buddhist Adi Dravidar community.

8. In the counter affidavit filed on behalf of the State of Tamil Nadu, it has been stated that the state Government had passed a Government Order, in G.O. Ms.No.1773, Social Welfare Department, dated 23.6.1984, republishing and communicating the Constitution Scheduled Castes/Scheduled Tribes Orders, 1950, and the Amendment Orders, 1956 and 1976, with the direction to adopt the list of Schedule Castes and Scheduled Tribes contained in the Central Act, 1976, strictly. The Government has also issued orders, in G.O. Ms.No.781, Revenue Department, dated 2.5.1988, simplifying the procedure for the issuance of the community certificate, in a printed format. In the Government letter, in

Ms.No.104, Adi Dravidar and Tribal Welfare (Adi Dravidar Welfare.2) Department, dated 11.9.1996, the District Collectors had been instructed to avoid the discrepancies in the nomenclature of the caste mentioned in the community certificate.

9. It has also been stated that, in the absence of any notification by the Government of India, listing "Buddhist Adi Dravida" as a caste in the schedule, no such certificate can be issued. The authorities are in no way denying the status, privileges and the benefits conferred by the Constitution, to the Adi Dravidars, who are professing Buddhism.

10. In the counter affidavit filed on behalf of the Union of India, it has been stated that the community certificates could be issued only in the name of the communities, which are mentioned in the Presidential Order issued under Article 341 of the Constitution of India. It is only "Adi Dravida" community, which has been mentioned in the list of Scheduled Castes relating to the state of Tamil Nadu. There is no category with the nomenclature of Buddhist Adi Dravidar.

11. Mr.G.Rajagopalan, the learned Additional Solicitor General of India, appearing on behalf of the Union of India, had submitted that the Government of India had laid down Modalities for the inclusion and exclusion of Scheduled Castes and Scheduled Tribes in the lists concerned, as per the procedures laid down in Articles 341 and 342 of the Constitution of India.

12. The learned Additional Solicitor General of India had further submitted that the Government of India had passed a Government order, in G.O. Ms.No.1773, Social Welfare Department, dated 23.6.1984, republishing and communicating the list of Scheduled Castes and Scheduled Tribes. In the Constitution (Scheduled Castes) Order, 1950, as amended by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, only 76 castes are scheduled in Part XVI - Tamil Nadu. There is no such entry in serial No. 77 relating to persons belonging to Scheduled Castes, who had converted to Buddhism. As per the present position, the term "Hindu" would include the persons belonging to Buddhism and Sikhism. In the decision of the Supreme Court, reported in State of Maharashtra Vs. Milind and Others, it was held that it would not be open to the State Government or the Courts or Tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342 of the Constitution of India. As such, the reliefs prayed for by the petitioners, in the present writ petitions, cannot be granted, at this stage. Therefore, the writ petitions are liable to be dismissed, as they are devoid of merits.

13. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, it is noted that there is no entry as "Buddhist Adi Dravidar" in the Presidential Order issued in accordance with the procedures prescribed under Articles 341 and 342 of the Constitution of India.

14. It is also noted that, as per the given definition, Hinduism would include Buddhism and Sikhism. It has also been stated that Adi Dravidars would have all the rights and privileges, whether they belong to Hinduism or Buddhism or Sikhism. While so, it may not be open to the petitioners to claim that they should be issued with the community certificates stating that they belong to "Buddhist Adi Dravidar" community. In fact, it may be appropriate to observe, at this juncture, that the community certificate issued by the authorities concerned need not give the nomenclature of the community, as "Hindu Adi Dravidar" community, as it has been admitted by the learned counsel appearing on behalf of the respondents that all persons belonging to Adi Dravidar community, whether they belong to Hinduism or Buddhism or Sikhism, would have the same rights and privileges wherever they are applicable. In such circumstances, we do not find any cause or reason to grant the reliefs, as prayed for by the petitioners, in the present writ petitions. As such, we find it appropriate to dismiss the writ petitions. Hence, the writ petitions are dismissed. No costs.