

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 126 OF 2003
(Arising out of SLP (Civil) No.24245 of 2002)

SMT. RANJANA
W/O BABASAHEB SATURE

... APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ORS.

... RESPONDENTS

ORDER

This appeal arises out of the judgment and order, dated 28th November, 2002, in Writ Petition No. 5058 of 2002, delivered by a Division Bench of the High Court of Judicature of Bombay at Aurangabad. By the impugned order, the High Court has dismissed appellant's petition questioning the correctness of the orders passed by the Caste Scrutiny Committee, which had invalidated the claim of the appellant as belonging to the "Mahar" caste, finally resulting in her disqualification as a Member of the Zilla Parishad, Aurangabad.

In order to appreciate the issue, requiring determination, a few material facts may be stated:

The appellant was born on 29th May, 1976 to Namdeo Nathaiji Bagul and Zalabai Bagul, a farmer "Mahar" family. On 22nd April,

1996, she married Babasaheb Nana Sature, a resident of Village Jategaon according to "Boudh" rites.

In January, 2002, elections to the Zilla Parishad, Aurangabad were announced and in the said election, the Constituency of '10-Mahalgaon Circle' was reserved for a Scheduled Caste citizen. On 31st January, 2002, the appellant approached the Sub-Divisional Officer, Vaijapur and obtained a Caste Certificate declaring that she belonged to "Mahar" caste, a listed Scheduled Caste in the Constitution (Schedule Castes) Order, 1950 for the State of Maharashtra. On the basis of her Caste Certificate, the appellant filed the nomination form as a candidate of the Shiv Sena Party to contest for the 10-Mahalgaon Circle Seat. On 18th February, 2002, the appellant was declared elected.

On 5th March, 2002, a complaint was lodged before the District Collector, Aurangabad by Smt. Kavita Anna Bagul, one of the defeated candidates, alleging that the appellant was disqualified to contest the elections as a Scheduled Caste candidate because she was born in a Christian family and professed Christianity. On 14th March, 2002, another complaint on the same lines was filed by Ramesh Khandagale, General Secretary, Republican Party of India.

The Collector referred appellant's caste certificate for validation to the Caste Scrutiny Committee ("the Committee", for

short), which in turn got a vigilance inquiry conducted. After the submission of the vigilance report, the appellant filed her defence statement. To substantiate their respective claims before the Committee, the appellant and the complainants adduced documentary and oral evidence. The Committee by a majority view of 2 : 1, vide its order dated 25th October, 2002/18th November, 2002 returned the finding that though the appellant was born in a "Mahar" caste, but her family professed Christianity inasmuch as the appellant was baptized on 27th October, 1977, when she was one year old; she was married in a Christian family and her contention that she had embraced Buddhism on 23rd August, 1988 was not established. Thus, her claim that she belonged to "Mahar" caste (a Scheduled Caste) was rejected.

Aggrieved by the order of the Committee, the appellant preferred a writ petition in the High Court, challenging the correctness of the findings of the Committee. It was pleaded on behalf of the appellant that she was born in a "Hindu Mahar" family; her school record shows that she was a Hindu; later on she embraced Buddhism on 23rd August, 1988; there was no Baptism ceremony on 27th October, 1977 and that her marriage as also of her brothers and sisters were solemnised as per Boudh traditions.

Tracing the origin of "Mahars", one of the socially backward classes in Rural Maharashtra, the High Court noted the factum of large scale conversions of socially backward classes in the rural areas of Maharashtra to Christianity. The High Court also noticed the amendment carried out in the Constitution (Scheduled Castes) Order, 1950, by the Act No.15 of 1999, whereby and whereunder the persons who had converted themselves to "Buddhism" were held eligible for the benefit of reservation as available to the Scheduled Castes from 1999 onwards. Taking into consideration the evidence on record, including the entries in the Baptism Register, the High Court observed thus:

"Reading the Baptism register and the entries thereof in respect of the petitioner on 27.10.1977, with the provisions of Canon Law as reproduced hereinabove, we have no doubt in our mind that the petitioner's parents professed Christianity when the petitioner was baptised at the age of one year and she was born to Christian parents. It is obvious that the petitioner's parents continue with their caste identity namely "Mahar caste" but that by itself would not be sufficient to hold that the petitioner did not Profess Christianity and she was all along a "Mahar Hindu / Buddhist".

In so far as the stand of the appellant that she had embraced Buddhism on her marriage is concerned, the High Court observed as under:

"It appears that the petitioner was aware of the legal position, namely: on reconversion to Buddhism or Hinduism she can enter into the fold of Scheduled Castes and she took the plea regarding her reconversion to

Buddhism. In support of this defence, she relied on the certificate purportedly issued by Bhadant. This Dhamma Dhiksha Certificate is purportedly dated 23.8.2002 by the said Bhadant. The Committee had issued a notice calling upon the said person to appear before it. In spite of receipt of the notice, the said Bhadant did not appear before the Committee on 30.8.2002. The certificate submitted by the petitioner thus remained to be proved.

The petitioner then relied on her wedding invitation card but she failed to examine any witness in support of the same. A printed card by itself cannot be a proof in support of the petitioner's contention that she was married as per Buddhist traditions. It was necessary for her to examine the printer or any of her elders in the family of the addressee of the invitation card. Under these circumstances, the Committee held and rightly so that the petitioner's claim regarding re-conversion to Buddhism could not be established".

The High Court, thus, rejected the plea of the appellant that she was neither born in a Christian family nor she professed Christianity at any time. Similarly, her stand that she had converted to Buddhism also did not find favour with the High Court. Consequently, appellant's writ petition was dismissed. Hence, this appeal.

We have heard learned counsel for the parties.

Learned counsel appearing on behalf of the appellant submits that the finding of the High Court to the effect that the appellant was born to Christian parents, who professed Christianity, when she was baptised at the age of one year is perverse inasmuch as no evidence to that effect has come on record. It is urged that even the

Committee had not recorded any such finding. Learned counsel, thus, contends that the order of the High Court deserves to be set aside on that ground alone.

Learned counsel for the respondents, on the other hand, support the order passed by the High Court and submit that the finding of the Committee that the appellant is not a Scheduled Caste, being essentially a finding of fact, it is not a fit case for exercise of jurisdiction under Article 136 of the Constitution.

Having perused the order passed by the Committee, we are of the opinion that the issue of appellant's caste deserves to be re-examined by the High Court in the light of the evidence on record.

As noted earlier, the stand of the appellant was that she was born in a Hindu (Mahar) family; never converted to Christianity and embraced Buddhism after her marriage and, therefore, she continued to be a Scheduled Caste, entitled to the benefit of Constitution (Scheduled Castes) Order 1950, particularly in view of the amendment by the Act No.15 of 1999, making converts to Buddhism eligible for benefit of reservation. It is manifest from the afore-extracted observations of the High Court that one of the factors which has weighed with the High Court in rejecting the claim of the appellant is that both her parents were Christians and had baptised her when she was only one year old. However, we find

that in the order of the Committee no such finding has been recorded. The High Court appears to have proceeded on the premise that since the Baptism Register contains an entry in respect of the appellant on 27th October, 1977, both her parents must have professed Christianity because without father and mother's Baptism, the Baptism ceremony of the child was not possible. Though the High Court has found the entry regarding appellant's Baptism to have been made in the normal course of Baptism, but the entry does not per se prove the fact that her parents had also converted to Christianity. In fact, finding by the High Court in this regard runs contrary to the observations made by the High Court in para 20 of its Order, which reads as follows:

"The Scrutiny Committee at the threshold accepted as a matter of fact that the petitioner was born in the former Mahar family and the certificates issued by the schools and the colleges in her favour as well in favour of her brothers, sisters and revenue documents relied on by her indicated that there was no dispute regarding her having born in the former Mahar family."

We are convinced that the question whether the parents of the appellant had converted to Christianity before she was born or at the time she was Baptised would have a material bearing on the issue involved in the appeal because her stand has been that she was born in a Hindu family and converted to Buddhism on 23 rd August, 1988, and therefore, requires to be examined in greater detail. It

may also be noted that even after her alleged Baptism on 27th October, 1977, caste of one of her brothers' was recorded as "Boudh" and of the other as "Hindu". In the light of this factual scenario, we are of the opinion that the matter deserves to be remitted back to the High Court for fresh consideration of the question regarding the caste of the appellant at the time when she had filed her nomination papers.

Accordingly, the appeal is allowed and the impugned judgment dated 28th November, 2002 is set aside. The matter is remitted back to the High Court for fresh adjudication on the issue noted above. We may clarify that we have not expressed any final opinion on the merits of appellant's stand.

The appeal stands disposed of accordingly, leaving the parties to bear their own costs.

.....J.
[D.K. JAIN]

.....J.
[R.M. LODHA]

NEW DELHI,
APRIL 30, 2009.