

Mohammad Sadique vs Darbara Singh Guru on 29 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2054, 2016 (11) SCC 617, 2016 (3) ADR 726, AIR 2016 SC (CIVIL) 1705, (2016) 1 ORISSA LR 1068, (2016) 4 ANDHLD 75, (2016) 2 RECCIVR 919, (2016) 4 ALL WC 3790, (2016) 4 SCALE 414, (2016) 2 CLR 1235 (SC), 2016 (2) KCCR SN 152 (SC), 2017 (121) ALR SOC 63 (SC), 2017 (171) AIC (SOC) 10 (SC)

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Bench: Prafulla C. Pant, Ranjan Gogoi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4870 OF 2015

Mohammad Sadique

... Appellant

Versus

Darbara Singh Guru

... Respondent

J U D G M E N T

Prafulla C. Pant, J.

This appeal, preferred under Section 116A of The Representation of the People Act, 1951, is directed against judgment and order dated 07.04.2015, passed by High Court of Punjab and Haryana at Chandigarh, in EP No. 1/2012, whereby Election Petition filed by respondent has been allowed, and election of the appellant from 102-Bhadaur (Scheduled Caste) Assembly Constituency in Punjab, has been set aside.

2. Brief facts of the case are that General Elections were held to Punjab Legislative Assembly, in January, 2012. Last date of filing of nomination papers was 12.01.2012. Date for scrutiny of nomination papers was 16.01.2012. And polling was held on 30.01.2012. The counting of votes was done on 06.03.2012, in which appellant was declared elected.

3. Election Petitioner (respondent herein) filed his nomination papers as a candidate of Shiromani Akali Dal. The appellant was a candidate from Indian National Congress. There were other 17 candidates in the fray. Seven independent candidates withdrew their candidature, as such, only 12 were left in the field. Since Bhadaur constituency was reserved for Scheduled Castes, only the candidates belonging to Scheduled Castes were qualified to contest the election under Section 5 (a) of The Representation of the People Act, 1951 (hereinafter “RP Act”).

4. It appears that on 14.01.2012, one Badal Singh complained to the Returning Officer, Bhadaur Constituency, alleging that appellant Mohammad Sadique was a muslim, and as such did not belong to any Scheduled Caste. He also filed Civil Writ Petition No. 985/2012 before the High Court which was dismissed as not pressed, since, the remedy of challenging the election through Election Petition was available.

5. Total 1,13,233 votes, including 83 Postal Ballots, were polled on 30.01.2012 in the Bhadaur Assembly Constituency. On counting of votes, appellant was found to have secured 52,825 votes in his favour, and respondent got 45,856 votes, and as such appellant Mohammad Sadique was declared elected from 102-Bhadaur (Scheduled Caste) Assembly Constituency on 06.03.2012.

6. Respondent challenged the election of the appellant pleading that, he (appellant), being a muslim, is not a member of Scheduled Caste, and as such he was not qualified to contest the election from any constituency reserved for Scheduled Castes. It is specifically pleaded that the appellant was born in a family which followed Islam, and his parents and others members of the family also professed Islam. They had their names which are prevalent amongst muslims, and they used to observe traditions of Islam. None of their family members use “Singh”, in their names, normally found with the names of those following ‘Sikh’ religion. It is further pleaded by the election petitioner-respondent that in his interview in the book titled - “Sada Bahar Gayak – Mohammad Sadique : Jeevan Te Geet”, the appellant had confessed that he was a muslim. It is also stated in the election petition that after death of the parents of the appellant, their bodies were buried as per muslim rites. It is further alleged that the Caste certificate issued to the appellant showing him to be member of community “Doom (Marasi)” by Tehsildar, Ludhiana (West), was cancelled. Thereafter, the appellant obtained caste certificate certifying his cast as “Doom” (i.e. Scheduled Caste) on 25.08.2006. However, the Joint Secretary, Department of Welfare, Government of Punjab vide memorandum No.1/32/2008- RS-1 dated 17.11.2008 issued directions to all the Deputy Commissioners in State of Punjab that a person professing Islam is not legally entitled to get Scheduled Caste certificate. Another communication dated 16.03.2009 stated to have been issued by the State Government informing the Deputy Commissioners that such Scheduled Castes certificates issued on or after 01.01.1980 were liable to be cancelled.

7. Appellant contested the election petition, and filed his written statement. He pleaded that he professed Sikh religion, and is a member of “Doom” community which is a Scheduled Caste in the State of Punjab. He admitted that he was born in a muslim family, but never offered prayers in mosque or observed Rozas. It is further pleaded that from the childhood appellant used to sing songs in the company of Sikh writers, artists and singers. He used to go to the Gurudwaras to pay obeisance and developed faith in Sikh religion. He followed the rites, rituals and customs of Sikh

religion. He performed 'Sampath Path' with Ragis at his residence for seven days in the year 2000, and his two daughters are married to Hindu boys. The appellant specifically stated in the written statement that he embraced Sikh religion formally on 13.04.2006, and a public notice to this effect was published in newspapers- 'The Hindustan Times', Chandigarh, and 'Daily Akali Patrika', Jalandhar, dated 04.01.2007. It is explained in the written statement that since the appellant was popular as a singer with name- Mohammad Sadique, therefore, he did not change his name even after embracing Sikh religion. On death of his wife Smt. Raffikan @ Seeto who died on 17.12.2007 though she was buried by followers of Islam, but appellant performed "Akhand Path" from 04.01.2008 to 06.01.2008 as per Sikh religion. It is further stated that Bhog of Akhand Path, Kirtan and Antim Ardas were held in Gurudwara at Ludhiana which was attended by prominent Sikh personalities. The appellant has explained in the written statement that his mother Smt. Parsanni Devi who died on 16.12.2009 was follower of Islam, and after her death her body was buried but the appellant performed Akhand Path and Bhog on 27.12.2009 in Gurdwara Sahib at village Kupkalan. Name of the appellant's father was Waliat Ali. The appellant denied that he admitted in the interview that he was a muslim. It is alleged that since earlier he was issued caste certificate as 'Doom Marasi' by mistake, that is why he got issued fresh certificate of caste mentioning 'Doom'. It is also pleaded that the daughters of the appellant were also issued Scheduled Caste certificates. The appellant accepted that he did receive a notice vide letter dated 30.11.2006, to deposit caste certificate issued to him by 19.12.2006 but denied that his certificate was ever cancelled or withdrawn by the Government.

8. The High Court, on the basis of the pleadings of the parties framed following issues:-

- (1) Whether the respondent being muslim was not qualified to contest the election from 102-Bhadaur Assembly Constituency reserved for the members of the Scheduled Castes?
- (2) Whether the respondent is a Sikh and professes Sikh religion?
- (3) Whether the election petition is not verified in accordance with Order VI Rule 15 of the Code of Civil Procedure, 1908? If so, its effect.
- (4) Whether no material fact can be pleaded in the replication after expiry of the period of limitation for filing an election petition?
- (5) Whether paragraph Nos. 12 to 15, 22(vii)(viii)(ix)(x)(xiii)(xiv) and 27 to 28 of the election petition are liable to be struck off on the ground mentioned in the Preliminary Objection No.1 of the written statement?
- (6) Relief."

9. The High Court, after recording evidence of the parties, and hearing them, allowed the Election Petition and set aside the election of the appellant, holding that he was a muslim, and not a member of Scheduled Caste, as such not qualified to contest election from 102 – Bhadaur (Scheduled Caste)

Assembly Constituency.

10. Aggrieved by the above order of the High Court, this appeal is preferred by the respondent in the Election Petition.

11. Submissions and arguments advanced on behalf of the appellant:

11.1 In 1939, appellant was born in 'Doom' caste in Punjab. The appellant's parents were Muslims by birth. However, the appellant even before his conversion to Sikhism, had complete inclination towards Sikhism and was a 'Ragi' and used to perform Kirtan at Alamgir Sikh Gurdwara.

11.2 The appellant has throughout been raised as a Sikh. He has professed the Sikh religion, and performed the ceremonies, rituals and rites of Sikhism.

11.3 He has never offered prayer in a mosque, or kept Rozas, or offered Namaz, or had never been to Haj. He has never lived nor considered himself a muslim, nor was he so considered by others.

11.4 He started singing songs at a very early age and in due course became one of the most popular folk singers in Punjab. He was associated with other writers, artists, singers and producers, who were all Sikhs, and used to visit Gurdwaras with them to pay obeisance, and had full faith in Sikh religion. At every stage - show of his, the appellant started the performance by singing religious songs in praise of the Guru Sahibans.

11.5 During 1989-1991, appellant's daughters were all issued caste certificates mentioning 'Doom' as their caste, as per certificates dated 01.08.1989, and 16.04.1991. These are still valid and not cancelled.

11.6 During 1999-2000, appellant was going through a personal bad phase in his life. On the advice of Sardar Pargat Singh Grewal, the appellant got performed the 'Sampat Path', which was performed by Sant Baba Sucha Singh along with other Ragis of Jawadi Taksal at his residence in Ludhiana for seven days. Thereafter, the appellant's condition started improving, and it further strengthened his belief in Sikh religion.

11.7 During 2001-2002, three of the appellant's daughters, namely, Naseem Akhtar, Shehnaz Akhtar and Javed Akhtar were married into Hindu families.

The marriages were performed as per Hindu rites and ceremonies, as desired by the respective husbands' families.

11.8 Though the appellant had always been raised as a Sikh and had followed Sikhism, he formally embraced Sikhism on 13.04.2006. He gave a public notice of this, which was published in leading newspapers namely Hindustan Times, Chandigarh and Daily Akali Patrika, Chandigarh on 04.01.2007. Since appellant had become famous throughout Punjab and indeed all over India as a singer, he retained his muslim name and did not change it.

11.9 On 13.07.2006, appellant got his application and affidavit typed by a typist in Ludhiana for obtaining his caste certificate. The appellant did not read the same before signing and Caste certificate was issued to the appellant mentioning his caste as 'Doom' (Marasi). The appellant at this stage realized that the typist had by mistake in the application wrongly mentioned his caste as 'Doom'(Marasi) instead of caste 'Doom'.

11.10 On 25.08.2006, appellant therefore asked the Tehsildar to cancel the wrong caste certificate and, on his asking, re-applied with the correct caste mentioned as 'Doom'. Fresh caste certificate mentioning 'Doom' as the caste was issued to the appellant, which is still valid and has not been cancelled. 'Doom' is a Scheduled Caste in Punjab.

11.11 There was no objection from anyone to the appellant's formally embracing Sikhism, rather, he was welcomed into it. Prominent Sikh personalities such as Sant Shamsheer Singh Jagera, President of Sant Sepahi Dal and International Sant Samaj, honoured the appellant by presenting "Saropa" to the appellant on 20.01.2007. He was also welcomed by Sant Kartar Dass Jee at his Dera and Sardar Pargat Singh Grewal, President, Prof. Mohan Singh Foundation.

11.12 The appellant's wife Rafikan @ Seeto passed away on 17.12.2007. Since she had been following Islam, she was buried. However, since the appellant had been following Sikhism, he got the 'Akhand Path' performed in Gurdwara Shri Tegh Bahadur Satsang Sabha, Ludhiana from 04.01.2008 to 06.01.2008, and the bhog of Akhand Path of Sh. Guru Granth Sahib was performed on 06.01.2008 at his residence and thereafter Kirtan and Antim Ardas was held on the same day followed by Guru ka Langar as per Sikh rituals, rites, customs and ceremonies. The obituary to this fact was got published in various newspaper namely 'Aj Di Awaj, Jalandhar dated 05.01.2008 and 'Ajit Jalandhar' dated 04.01.2008. The Kirtan and Antim Ardas of the appellant's wife was well publicised and widely attended, including by prominent Sikh personalities. The entire event was also videographed and the original video recordings were produced as evidence before the High Court.

11.13 The appellant's mother Smt. Parsanni Devi passed away on 16.12.2009. Since she had followed Islam, she was buried. However, again, since the appellant was following Sikhism, he got performed the Akhand Path and bhog of Akhand Path of Sri Guru Granth Sahib and Kirtan and Antim Ardas on 27.12.2009 in Gurdwara Sahib at Village Kupkalan, Tehsil Malerkotla District Sangrur. This was also attended by several prominent Sikh personalities.

11.14 In December 2011, the election scheduled for Punjab Legislative Assembly Elections was announced. Nomination papers were to be filed on or before 12.01.2012. Scrutiny of papers was on 13.01.2012. The appellant filed his nomination papers from Indian National Congress Party for

Bhadaur Constituency. The respondent (Election Petitioner) filed his nomination from the Shiromani Akali Dal Party. Bhadaur constituency was reserved for Scheduled Castes in Punjab. Demographically, it is dominated by Sikhs who are the majority religious group in this constituency. Polling was held on 30.01.2012. On 06.03.2012, results were declared and the appellant emerged as the successful candidate, winning by a wide margin.

11.15 For the avoidance of doubt, on 11.08.2014, appellant made a declaration as per Section 2(9) of the Sikh Gurdwaras Act 1925 to the effect that he was a follower of Sikh religion. However, on 07.04.2015, the impugned order was pronounced by the High Court, which allowed the petition, holding that the appellant was not eligible to contest the election from Bhadaur. The High Court held that since the appellant's parents followed Islam, he was a muslim and therefore could not be a member of a Scheduled Caste. It further held that appellant had not embraced Sikhism and even if he embraced Sikhism, he would not get the benefit of being a member of a Scheduled Caste.

11.16 The impugned order is erroneous because it ignored the overwhelming evidence that the appellant had lived his life throughout as a Sikh. Finding of High Court that the appellant is a muslim is incorrect, and the evidence has not been correctly appreciated. There is no formal ceremony or procedure required to embrace Sikhism. The fact that a person has led his life throughout by following Sikh customs, rituals, rites and ceremonies, and that he has not followed the ceremonies, of any other religion, leads to the conclusion that the person is a Sikh.

11.17 Appellant had led his life throughout by following Sikh customs. He used to pray in Gurdwaras. He got the Akhand Path, bhog, kirtan and Antim Ardas performed after the death of his wife and his mother. Three of his daughters are married into Hindu families. He had given a public notice of his formally embracing Sikhism as far back as in 2006, which was not objected to by anyone. On the other hand, the evidence was clear that he had never observed any of the customs, rites, or ceremonies of Islam. Thus, neither did appellant conduct himself as a muslim, nor did he regard himself as the one. He was not perceived as a muslim by his near and dear ones, friends and acquaintances.

11.18 The High Court erred in holding that the declaration made by the appellant under the Sikh Gurdwaras Act 1925 would take effect only from the date of the declaration. It failed to note that the declaration, by its very nature, would be retroactive in operation.

11.19 The High Court erred in holding that the instant case was one of conversion from Islam to Sikhism and therefore the appellant could not claim to be a member of a Scheduled Caste. The High Court failed to appreciate that the appellant had been raised as a Sikh belonging to 'Doom' caste from the very beginning and such it was not a case of conversion.

11.20 The High Court has misconstrued the evidence of PW-2, PW-4 and PW-5. All that was stated by these witnesses is that the State Government had issued instructions that Scheduled Caste Certificates should not be issued to muslims, even if they indicated their caste as 'Doom'. These instructions were not specific to the case of the appellant since the appellant is not a muslim. The Caste Certificate issued to the appellant remains valid even on date, and has never been cancelled.

11.21 The High Court further erred in holding that since the appellant did not wear the five 'kakkas' i.e Kachha, Karha, Kirpan, Kangha and Kesh, he could not be a Sikh. The High Court failed to note that the same is required only of Amritdhari Sikhs, and not all Sikhs, and even among Amritdhari Sikhs it is not a universal practice.

12. Submissions and arguments advanced on behalf of Respondent (Election Petitioner) :-

Constitution (Scheduled Castes) Order, 1950 provides that no person who professes a religion different from the Hindu, the Sikh or the Buddhist shall be deemed to be a member of a Scheduled Caste. Thus a person professing Muslim religion cannot claim Scheduled Caste status.

12.2 Under section 5(a) of the Representation of the People Act 1951, the qualification to be elected to the Legislative Assembly from a seat reserved for Scheduled Castes is that the candidate must belong to one of the Scheduled Castes specified for the said State, in the Constitution (Scheduled Castes) Order, 1950. Since the Bhadaur Constituency was reserved for the Scheduled Castes in the State of Punjab, as such the appellant being not a member of Scheduled Caste was not qualified to contest election from said Constituency.

12.3 The High Court has correctly evaluated the material available on record to find out as to whether the appellant had taken birth in the family of Scheduled Caste as per the Constitution (Scheduled Castes) Order, 1950 before concluding that the appellant being a muslim cannot derive any benefit of Scheduled Caste.

12.4 Even if it is presumed that the appellant belonged to Doom community and embraced Sikhism, it cannot be said that he was a member of Scheduled Caste and he would carry his 'Doom' Caste along with him at the time of conversion. It is apposite to mention here that a muslim even if belonging to Scheduled Caste was not eligible to contest the election, as such by merely embracing Sikhism, he cannot become eligible for the same.

12.5 A person embracing religion other than Hindu or Sikh does not carry his caste with him as a general rule. No special circumstances have been brought on record so that this Court may presume that the appellant had carried his 'Doom' caste along with him after embracing Sikhism. In fact, on the basis of the evidence led by both the parties, the High Court was rightly not convinced that the appellant had embraced Sikhism for the reason that the appellant fairly admitted during his cross-examination that his forefathers as well as his wife were following Islam.

Moreover, the declaration which is required to be verified by a Magistrate under Rule 3(b) of the Sikh Gurdwaras Rules, 1925 has been verified by the Oath Commissioner and not by the Magistrate, and hence it does not qualify to be a legal declaration and therefore, its not a valid declaration.

By an application dated 13.07.2006, (Exh. PF), the appellant had applied for issuance of a Scheduled Caste certificate by claiming himself that he belonged to “Doom (Marasi)” caste, which was granted to him on the same date i.e. 13.07.06 (Exh. PF6), under the orders of the then Tehsildar, Ludhiana (West). When the said fact came to light, the then Commissioner, Patiala Division, Patiala, ordered an inquiry and thereafter a direction was issued to the appellant to return the said Scheduled Caste certificate in the office of the Tehsildar by 19.12.2006, but the same was not obeyed by the appellant and, as such, the Government of Punjab vide its order no. 15/MC, dated 11.01.2007, cancelled the said certificate. In the meantime, the appellant again applied on 25.08.2006 (Exh. PG), for issuance of another Scheduled Caste certificate claiming himself to be a “Doom” caste only and a certificate (Exh. PG2), to that effect was issued on the same date i.e. 25.08.2006. However, the Joint Secretary, Welfare, Government of Punjab, vide his Memo No.1/32/2008-RS-1, dated 17.11.2008, issued directions to all the Deputy Commissioners in the State of Punjab, to the effect that a person belonging to Islam was not legally entitled to get a Scheduled Caste certificate.

12.8 A public notice claiming to declare the appellant a Sikh was published in the newspapers – The Hindustan Times, Chandigarh and Daily Akali Patrika, Jalandhar on 04.01.2007 but as admitted by his own witness RW 14 in the cross examination, the appellant was a Mohammedan before the advertisement in the newspapers on 04.01.2007. As such the appellant is a born muslim, and continued to be a muslim upto the date of filing nomination papers.

The two Scheduled Caste Certificates dated 13.07.2006 Exh. PF6 and 25.08.2006 Exh. PG2 got issued by the appellant are not valid Scheduled Caste certificates.

12.10 Sub Section (9) of Section 2, of the Sikh Gurudwara Act, 1925 defines a Sikh reads as follows-

“(9) Sikh – “Sikh means a person who professes the Sikh religion or in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his life time.

If any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such manner as the State Govt. may prescribe the following declaration: -

I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the ten Gurus and that I have no other religion.” 12.11 In the Rules framed under Sikh Gurudwara Act, 1925, it is provided that a declaration shall be made either orally in the presence of the authority by whom it is to be decided whether the person in question is a Sikh or not, or in writing and (i) if the declaration is made orally the authority in whose presence it is made shall record the making of it in writing and the record shall be attested by the signature or thumb-mark of the person making it, and (ii) if the declaration is made in writing it shall be signed by the person making it, shall be verified by a magistrate and shall be forwarded in original to the authority by whom it is to be decided whether the person in question is a Sikh or not.

12.12 For ceremony of Baptism and Imitation procedure required in Art. XXIV is required to be followed, which is not followed, as such High Court committed no error of law in setting aside election of the appellant.

12.13 In the above circumstances, the respondent deserves to be declared elected for remaining period from Assembly Constituency Bhadaur.

13. We have considered the rival submissions of learned counsel for the parties and perused the papers on record.

14. In the present case, the main issue before us is whether the High Court has erred in holding that the appellant was not a member of Scheduled Caste on the date of filing of his nomination papers from the Assembly Constituency 102 Bhadaur (SC) in Punjab, as such he was not qualified, and his election from said constituency is bad in law.

15. Before further discussion we think it just and proper to understand what “caste” actually means. The word “caste” is defined in Encyclopedia Americana, Vol. 5, as under: -

“Caste: Caste is a largely static, exclusive social class, membership in which is determined by birth and involves particular customary restrictions and privileges. The word derives from the Portuguese *casta*, meaning ‘breed’, ‘race’, or ‘kind’ and was first used to denote the Hindu social classification on the Indian subcontinent. While this remains the basic connotation, the word ‘caste’ is also used to describe in whole or in part social systems that emerged at various times in other parts of the world....” According to Webster Comprehensive Dictionary (International Edition), ‘caste’ in relation to Hinduism means – any of the four social divisions namely Brahmin (Priests), Khshatriya (Warriers), Vaishya (agriculturists & traders) and Shudras (servants).

16. Now, we would like to examine the expression “Scheduled Caste”. In *Guntur Medical College v. Y. Mohan Rao*[1], Constitution Bench of this Court has explained the term “Scheduled Castes” and made following observation: -

“3. The expression ‘scheduled castes’ has a technical meaning given to it by clause (24) of Article 366 and it means -

‘such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution’.

The President in exercise of the power conferred upon him under Article 341 has issued the Constitution (Scheduled Castes) Order, 1950. Paras (2) and (3) of this

Order are material and they read as follows:

“2. Subject to the provisions of this Order, the castes, races or tribes or parts of or groups within caste or tribes specified in Part I to XIII of the Schedule to this Order shall, in relation to the States to which these parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule.

3. Notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.

The schedule to this order in Part I sets out the castes, races or tribes or parts of or groups within castes or tribes which shall in the different areas of the State of Andhra Pradesh be deemed to be scheduled castes. One of the castes specified there is Madiga caste and that caste must, therefore, be deemed to be a scheduled caste. But by reason of clause (3), a person belonging to Madiga caste would not be deemed to be a member of a scheduled caste unless he professes Hindu or Sikh religion at the relevant time. It is not necessary that he should have been born a Hindu or a Sikh.....” (Emphasis supplied)

17. In *S. Anbalagan v. B. Devarajan*[2], which is a case pertaining to election from Rasipuram Parliamentary Constituency (reserved for Scheduled Castes), a three-Judge Bench of this Court at the end of para 13 has observed as under: -

“13.Now, if such a Christian becomes a Hindu, surely he will revert to his original caste, if he had lost it at all. In fact this process goes on continuously in India and generation by generation lost sheep appear to return to the caste-fold and are once again assimilated in that fold. This appears to be particularly so in the case of members of the Scheduled Castes, who embrace other religions in their quest for liberation, but return to their old religion on finding that their disabilities have clung to them with great tenacity. We do not think that any different principle will apply to the case of conversion to Hinduism of a person whose forefathers had abandoned Hinduism and embraced another religion from the principle applicable to the case of reconversion to Hinduism of a person who himself had abandoned Hinduism and embraced another religion.” (Emphasis supplied)

18. In *Kailash Sonkar v. Maya Devi*[3], which arose out of election from a reserved Assembly constituency in Madhya Pradesh, another three-Judge Bench of this Court examined the question – whether the loss of the caste is absolute, irrevocable so as not to revive under any circumstance. After deriving the history of caste system, this Court observed following guiding principle to determine the question in paragraph 28: -

“Where a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is

liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed. There are number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant enough to permit such a course of action. Where the new religion, however, does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In a large area of South and some of the North-Eastern States it is not unusual to find persons converted to Christianity retaining their original caste without violating the tenets of the new order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste. Moreover, it is a common feature of many converts to a new religion to believe or have faith in the saints belonging to other religions. For instance, a number of Hindus have faith in the Muslim saints, Dargahs, Imambadas which becomes a part of their lives and some Hindus even adopt Muslim names after the saints but this does not mean that they have discarded the old order and got themselves converted to Islam”.

19. In above Kailash Sonkar (supra) this Court further discussed regarding reconversion into Hinduism by the members of the community whose forefathers converted to other religions. Applying the doctrine of eclipse, this Court observed as under: -

“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. 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. 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. 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. However, that question does not arise here.” (Emphasis supplied)

20. In paragraphs 51 and 52 in Kailash Sonkar (supra), on the facts of said case, this Court gave following conclusions: -

“51. (1) That the respondent was born of Christian parents and was educated in various schools or institutions where she was known as a Christian, (2) That 3-4 years before the election, the respondent was reconverted to Hinduism and married Jai Prakash Shalwar, a member of the Katia caste, and also performed the Shudhikaran ceremony, (3) That she was not only accepted but also welcomed by the important members, including the President and Vice-President, of the community, (4) There is no evidence to show that there was any bar under the Christian religion which could have prevented her from reconverting herself to Hinduism, (5) That there was no evidence to show that even her parents had been Christian from generation to generation.

52. In these circumstances, therefore, this case fulfils the conditions required for being reconverted to Hinduism from Christianity in order to revive the original caste.”

21. In K.P. Manu v. Scrunity Committee for Verification of Community Certificate[4], one of the questions examined by this Court is – whether on re-conversion, a person born to Christian parents could, after reversion to the Hindu religion, be eligible to claim the benefit of his original caste. Referring to various case laws, including those referred above, this Court disagreed with the finding of Scrutiny Committee that caste certificate issued to a person on the basis of the fact that though the great grandfathers of such person belonged to Pulaya community (i.e. Scheduled Caste), but he was born after his ancestors embraced Christianity and thereafter, reconverted into Hindu religion is not entitled to the Scheduled Caste certificate. Constitution Bench decision in Guntur Medical College (supra) and three-Judge Bench decisions in S. Anbalagan (supra) and Kailash Sonkar (supra) are referred to and relied upon in K.P. Manu (supra).

22. In the case at hand, admittedly the appellant was born to muslim parents. However, he has proved that his family members though followed Islam but they belonged to “Doom” community. It is settled law that a person can change his religion and faith but not the caste, to which he belongs, as caste has linkage to birth. It is proved on the record that the appellant was issued a caste certificate as he was found to be member of ‘Doom’ community by the competent authority, after he declared that he has embraced Sikhism, and he was accepted by the Sikh community. It is not disputed that ‘Doom’ in Punjab is a Scheduled Caste under Constitution (Scheduled Castes) Order, 1950. The Scheduled Caste Certificate No. 6149 dated 25.08.2006 (Exh PG/2) was issued to the appellant by the competent authority, and accepted by the returning officer. Said certificate appears to have not been cancelled. What is shown on behalf of the respondent is that vide communication dated 17.11.2008 (Ext. PJ) State authorities informed and clarified to the Deputy Commissioner that members following Islam are not entitled to the certificate of Scheduled Caste, and if issued, certificates may be cancelled. But the certificate (PG/2) dated 25.08.2006 already issued in favour of appellant, is not cancelled, which he obtained after his conversion to Sikhism. It is proved on the record that the appellant embraced Sikh religion on 13.04.2006, and got published the declaration on 04.01.2007 in the newspapers Hindustan Times (English) Exh.RA, and Ajit (Punjabi) Exh RB.

Nomination for election in question was filed by him five years thereafter. The appellant has further sufficiently explained that since he was popular as a singer with the name – ‘Mohammad Sadique’ as such without changing his name, he accepted the Sikhism and followed all rites and traditions of Sikh Religion.

23. It is not essential for anyone to change one’s name after embracing a different faith. However, such change in name can be a corroborating fact regarding conversion or reconversion into a religion/faith in appropriate cases. Also it is not necessary in law that entire family of a person should convert or reconvert to the religion to which he has gone. RW-5 Mohammad Sadique has stated that he not only followed Sikh traditions, he never offered Namaz, nor observed Roza nor went to Haj. It is also relevant to mention here that PW-7 Darbara Singh Guru (respondent-Election Petitioner) in his cross-examination admits that he did not raise any objection at the time when nomination papers were filed by the appellant.

24. In the above circumstances, we are inclined to hold that the High Court has erred in law, by ignoring the above facts on the record, and giving importance to form of declaration, and the interview said to have been given by appellant to PW 6 Gulzar Singh Shaunki, author of book - “Sada Bahar Gayak – Mohammad Sadique : Jeevan Te Geet” (Exh.PK). Statement of the appellant RW-5 regarding conversion to Sikhism, is fully corroborated by RW-11 Darshan Singh, Ex-Sarpanch of village Kupkalan, RW-6 Rachhpal Singh, Secretary of Gurudwara Sahib Kupkalan, RW-9 Ms. Sukhjeet Kaur, co-singer in Gurudwara, and RW-14 Sant Shamsheer Singh Jageda, who presented ‘Saropa’ to the appellant.

25. Having re-appreciated the evidence on record, as above, and keeping in view the law laid down by this Court in *Guntur Medical College v. Y. Mohan Rao*¹, *S. Anbalagan v. B. Devarajan*², and *Kailash Sonkar v. Maya Devi*³, in our opinion, the impugned judgment passed by the High Court cannot be upheld.

26. Accordingly, the appeal is allowed, and the Election Petition filed by the respondent is dismissed. No order as to costs.

.....J. [Ranjan Gogoi]J. [Pravfulla C. Pant] New Delhi;

April 29, 2016.

[1] (1976) 3 SCC 411

[2] (1984) 2 SCC 112

[3] (1984) 2 SCC 91

[4] (2015) 4 SCC 1

1 (1976) 3 SCC 411

- 2 (1984) 2 SCC 112
- 3 (1984) 2 SCC 91