Goka Ramalingam vs Boddu Abraham & Anr on 27 November, 1968

Equivalent citations: 1970 AIR 741, 1969 SCR (2) 992, AIR 1970 SUPREME COURT 741

Author: M. Hidayatullah

Bench: M. Hidayatullah, G.K. Mitter

PETITIONER:
GOKA RAMALINGAM

Vs.

RESPONDENT:
BODDU ABRAHAM & ANR.

DATE OF JUDGMENT:
27/11/1968

BENCH:
HIDAYATULLAH, M. (CJ)
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MITTER, G.K.

CITATION:
1970 AIR 741 1969 SCR (2) 992
1969 SCC (1) 24

ACT:
Practice-Election petition-Election to reserved seat from scheduled caste constituency-Election challenged on the ground that successful candidate was converted to Christianity-Petition dismissed-Plea that parents successful candidate were converts sought to be raised in Supreme Court-Belated plea, if should be allowed.
Constitution (Scheduled Castes) Order, 1950 cl. (3)-Scope of.

HEADNOTE:
The appellant and respondents were contestants for a reserved seat from 'a scheduled caste constituency for election to the State Legislative Assembly, and the first respondent was elected. The election was challenged by the

appellant on the ground that the respondent was not a member of scheduled caste because, he embraced Christianity and professed the Christian religion, and therefore, was not eligible to stand for election for the reserved seat. During the trial, the High Court summoned a Register, containing the names of all converted Christians of the locality, which was maintained by the local church. There was no entry showing that the first respondent was converted to Christianity. On the issue whether the first respondent was converted to Christianity, the High Court, on a consideration of the entire evidence held that there were no proof of such conversion and dismissed the petition.

In appeal to this Court, a petition was flied alleging that the Register contained entries showing that the parents of the first respondent were converted to Christianity and it was prayed that the case should proceed on the plea of conversion to Christianity of the parents of the first respondent, in place of the original plea that the first respondent himself was so converted.

HELD: The prayer in the petition could not be granted because: (a) The plea changed the entire nature of t e case and required fresh evidence, (b) it was belated and beyond the period of limitation prescribed for filing of election petitions; and (c) the application should have been filed in the High Court itself, for, the Register was produced in the High Court and it was inspected by the parties who had thus ample opportunity to discover the basis for the new plea. [995 D--F]

Under cl. (3) of the Constitution (Scheduled Castes) Order, 1950, it would have been sufficient if the appellant pleaded and proved that the first respondent was a Christian that therefore he was not a Hindu and was not competent to stand for the reserved seat; but he chose to establish that the first respondent was himself converted to Christianity and failed to do so. [996 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 61 of 1968. Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated August 21, 1967 of the Andhra Pradesh High Court in Election Petition No. 3 of 1967.

P. Ram Reddy and A.V.V. Nair, for the appellant. R.K. Garg, D.P. Singh, S.C. Agarwal and Asif Ansari, for respondent No. 1.

The Judgment of the Court was delivered by Hidayatullah, C.J. This appeal arises from the decision of the Andhra Pradesh High Court dated August 21, 1967 by which an election petition filed by the present appellant Goka Ramalingam to question the election of the answering respondent Boddu Abraham was dismissed. The matter concerns the Cheriyal (Scheduled Caste) constituency in the

election to the Andhra Pradesh Legislative Assembly held in February, 1967. Three candidates had offered themselves for election. Two of them we have already named, the third is one Devadanam. The answering respondent obtained 15000 and odd, the appellant-election petitioner 12000 and odd and Devadanam 7000 and odd votes. The election petition was based only on one issue, namely, that the respondents who had stood for a scheduled caste Reserved seat had "converted themselves into Christianity long time back and they continue to profess the said religion Christianity even today." Under the Constitution (Scheduled Castes) Order, 1950, it is provided as follows:

> "(2) Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes, specified in Parts I to XIII of the Schedule to this Order shall, in relation to the States to which those 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 Pans of that Schedule.
>
> (3) Notwithstanding anything contained' in paragraph 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."

It would therefore appear that if the answering respondent and Devadanam were not members of a named scheduled caste (in this case the Madiga caste) they were not eligible to stand for election for the Reserved Seat. The case as put forward in the High Court was that these two candidates had themselves got converted into Christianity a long time ago and that they did not therefore profess Hindu religion although in the plea it is stated affirmatively that they profess Christian religion. The case went to trial on this plea and the issues framed were as follows:

> "1. Whether the respondents who admittedly once belonged to 'Madiga' community embraced Christianity and professed the religion of Christianity at the time of election and hence respondent No. 1 was not qualified to be chosen to fill the seat in the Assembly of the State as per s. 5(a) read with Rule (3) of the Consittution (Scheduled Castes) Order, 1950 (C.O. 19 dated 10-8-59) ?
>
> 2. Whether the nomination papers of both the respondents were improperly received and as a result thereof the result of the election has been materially affected?
>
> 3. What is the effect of admission of respondent 2 in his W.S. as to his status on this election petition?"

Evidence was led to prove that the answering respondent was converted to Christianity. This evidence was not accepted by the High Court. As regards the other respondent, he went out of the fight admitting that he was a Christian and nothing more need -be said of him.

It appears that while this-case was going on, the learned Judge was informed that a Register of all converted Christians was maintained by the church. He accordingly sent for the Register and marked it as Ex. C-1. In the judgment the learned Judge gives his order pertaining to this action. It

reads as follows:

> "I may mention here that since it came out in the evidence of R.W. 2 that the names of all converts to Christianity within the jurisdiction of Hanumakonda Baptist Mission would be entered in the General Record of the Field Association, Hanumakonda, and that register was flied as an exhibit in a suit pending in the District Court at Warangal, I summoned it and marked it as Ex. C-1. I gave opportunity for the lawyers appearing on both sides to inspect the register and make their submissions. The entries relating to Dharmasangaram village are to be found in pages 50 to 52 and 182. It is true that the name of the 1st respondent is not found in this Record; but since this register does not appear to be an exhaustive and complete record of all the Christians in that area, I do not propose to rely on the entries in this register for any purpose."

The Register was inspected by the parties. They went into it with a view to finding out whether the answering respondent and his wife Chinna Mariamma had been converted or not. There was no entry showing that they had been so converted. It appears, however, that the Register did contain two entries show-

ing the conversion of Boddu Kumaraiah and China Buchamma who are now said to be the father and mother of answering respondent. An affidavit has also been filed from the Pastor of the Church in which it is stated that these entries refer to the parents of the answering respondent. Even though the Register was in court and was open to inspection of the parties, care was not taken to discover these two names, with the result that the case was fought on the original plea and issue that the answering respondent was converted to Christianity. That apparently was not a fact, because if he was born of Christian parents he did not need conversion. The fact, however, is only alleged now before us and has not been subjected to proof. The question therefore is whether in view of this fresh evidence, we should allow this appeal. On a proper consideration of the entire matter we are of opinion that we cannot. An application was made to us asking for amendment of the plea of conversion of the answering respondent into one of conversion of his parents to Christianity. We have been unable to allow that petition, because it changes the nature of the case requiring fresh evidence to be taken and is filed also beyond the period of limitation prescribed for filing of election petitions. That it does change the entire nature of the case is obvious, because instead of the plea that the answering respondent was converted to Christianity, it is now sought to be substituted a plea that the parents were converted to Christianity. We should have understood such an application being made in the Court of trial when the Register was produced, because that might have been a matter not within the knowledge of the election petitioner till the register was produced. But after the Register had been produced and it lay in the Court for nearly an year and had been inspected by the answering respondent, it does not lie in his mouth to say that he had no notice of the true facts. He had notice of them because he had the register with him and the names of the alleged parents of the answering respondent are clearly mentioned therein. In fact the register seems to be a well-kept document written extremely legibly and there was no danger of any name having been overlooked. Therefore we must consider this as a belated plea and reject it on the two grounds already mentioned by us.

Once the application for amendment is out the way, the question is whether the appeal of the election petitioner can be otherwise sustained. Mr. Ram Reddy contended that under el. (3) of the Presidential Order, it is sufficient to prove that if a person professes religion other than Hinduism or Sikhism it disentitles him to contest for a reserved seat. He says that for whatever reason the answering respondent be regarded as a Christian today or at any rate at the time he filed his nomination paper, he would be incompetent to stand for the election from the reserved seat if he professed a religion other than Hinduism " or Sikhism. In other words, 'he wants to extract from the plea and the issue a very much narrower field for enquiry, namely, that the answering respondent was not a Hindu on that date. This would have been a proper plea to take in the first instance. It is because of clumsy blundering that the petitioner undertook a much greater burden than the law required him to take. He should have pleaded only that the returned candidate was a Christian on the date he filed his nomination paper and therefore was not ,a Hindu and was not competent to stand for the Reserved Seat. Instead he proceeded to demonstrate through his plea and his evidence that the returned candidate was himself converted to Christianity and failed. In this view of the matter we do not think that we should allow him to change his front and narrow the field of enquiry to one which he should have adopted in the first instance. Not having done so, we think that it is too late for him to change his case now. For these reasons, we are constrained to dismiss the appeal. We may say that it is an odd situation, because probably a Christian occupies a Reserved Seat, but this is the result of the vagaries of litigation which have to be carried on according to rules. The rules do not permit us to give relief where the party himself is at fault in making a wrong plea and in not making the right plea in time. But in the circumstances of the case, we think that the parties should be directed to bear their costs throughout.

V.P.S. Appeal dismissed.