

Punjab Rao vs D. P. Meshram & Others on 26 October, 1964

Equivalent citations: 1965 AIR 1179, 1965 SCR (1) 849

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, Raghubar Dayal

PETITIONER:

PUNJAB RAO

Vs.

RESPONDENT:

D. P. MESHAM & OTHERS

DATE OF JUDGMENT:

26/10/1964

BENCH:

MUDHOLKAR, J.R.

BENCH:

MUDHOLKAR, J.R.

GAJENDRAGADKAR, P.B. (CJ)

WANCHOO, K.N.

HIDAYATULLAH, M.

DAYAL, RAGHUBAR

CITATION:

1965 AIR 1179

1965 SCR (1) 849

CITATOR INFO :

R 1969 SC 101 (13)

ACT:

Constitution (Scheduled Castes) Order, 1950 Para 3-
"Profess", meaning of-Hindu-If includes Buddhist.

HEADNOTE:

The appellant challenged the election of the 1st respondent to the, Legislative Assembly on the ground that the latter had embraced Buddhism and had ceased to be a member of a Scheduled caste within the meaning of the Constitution (Scheduled Castes) Order, 1950, and was thus disentitled from being a candidate for the particular seat. The Election Tribunal upheld the contention and set aside the election. On appeal, the High court held that the

conversion of the 1st respondent to Buddhism had not been established by evidence and upheld his election. On appeal to the Supreme Court,

HELD : (i) The word "profess" in the Order means "to declare one's belief in". A declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. It is unnecessary to enquire further as to whether the conversion to another religion was efficacious. [859 A-D]

(ii) No doubt the definition of "Hindu" contained in the Explanation to Article 25 is expanded but that is only for the purposes of sub-cl. (2) of cl. (2) of that Article and for no other. The mention of Sikh religion in Para 3 of the Order clearly shows that the word "Hindu" in the order is used in the narrower sense of orthodox Hindu religion which recognises castes and contains injunctions based on caste distinctions. It is not comprehensive enough to include Buddhism. [859 H; 860 B-C]

Karwade v. Shambhakar, I.L.R. 1959 Bom. 229 over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 562 of 1964.

Appeal by special leave from the judgment and order dated February 7, 8, 1963, of the Bombay High Court (Nagpur Bench) at Nagpur in Appeal No. 115 of 1962.

M. C. Setalvad, N. L. Belekar, R. D. Awade and A. G. Ratnaparkhi, for the appellant.

N. C. Chatterjee, V. S. Sawhney, S. S. Khanduja, S. K. Manchanda and Ganpat Rai, for respondent No. 1.

The Judgment of the Court was delivered by Mudholkar J. The question which arises for consideration in this appeal by special leave from the judgment of the Bombay High Court is whether respondent No. 1 Dr. D. P. Meshram was entitled to be a candidate for election to the Maharashtra Legislative Assembly from constituency No. 190 of Nagpur III, a constituency reserved for candidates from scheduled castes.

The appellant and respondents 1 to 4 were candidates duly nominated for election to the Assembly from the aforesaid constituency. The poll was taken on February 27, 1962 and respondent No. 1 who had polled the highest number of votes was declared elected. The appellant thereupon preferred an election petition before the Election Commission, the main allegations in which were (a) that respondent No. 1 having embraced Buddhism on March 17, 1957 had ceased to be a member of a Scheduled Caste within the meaning of the Constitution (Scheduled Castes) Order, 1950 and was

thus disentitled from being a candidate for the particular seat and (b) that respondent No. 1 was guilty of several corrupt practices. The Tribunal held that the "Corrupt practices alleged against respondent No. 1 were not established. It, however, came to the conclusion that respondent No. 1 had embraced Buddhism as alleged by the appellant and was, therefore, not eligible for being a candidate for election from the reserved constituency. Upon this ground the Tribunal set aside the election of respondent No. 1. It may be mentioned that the appellant had made a further prayer to the effect that he should be declared elected to the seat; but this prayer was not granted by the Tribunal on the ground that he was not the only other candidate for election and, therefore, it cannot be said how the votes which respondent No. 1 had secured would have been distributed among the remaining candidates. Aggrieved by the decision of the Tribunal respondent No. 1 preferred an appeal before the High Court of Bombay. The only question which was urged before the High Court was regarding the alleged conversion of respondent No. 1 to Buddhism. On that question the High Court reversed the finding of the Tribunal and held that the fact had not been established by evidence. The High Court, therefore, upheld the election of respondent No. 1. In support of his contention that respondent No. 1. was converted to Buddhism on March 17, 1957 the appellant had adduced evidence of P.W. 9 Ramrattan Janorkar, P.W. 2 Akant Mate, P.W. 5 Devaji Bhagat and P.W. 10 Wasudeo Dongre. Ramrattan who claims to be a Buddha has said that he presided over a meeting held at Lashkari Bagh, Nagpur, two or three days after the Holi festival of the year 1957 at which a mass conversion of persons belonging to Scheduled Castes to Buddhism took place.. He named ten persons who, according to him, had been converted at that meeting, one of them being respondent No. 1. Amongst others named by him were P.W. 2 Akant Mate, P.W. 5 Devaji Bhagat and P.W. 10 Wasudeo Dongre. These three persons have corroborated the evidence of Ramrattan. We have been taken through the evidence of these witnesses and though there may be some contradictions on minor points on the whole their evidence is consistent and has a ring of truth in it. Moreover, the Tribunal which heard and saw the witnesses depose has believed in their veracity. The High Court has, however, not chosen to accept their evidence mainly on the ground that these witnesses belong to a party which is opposed to respondent No. 1 and his party. It is not disputed before us that these witnesses as well as respondent No. 1 were members of the Republican Party of India founded by the late Dr. Ambedkar and that some time after his death there was rift in the party as a result of which two groups were formed. The leader of one of these groups in Haridas Awade and that of the other is Khobargade. Respondent No. 1 belongs to the group headed by Khobargade while the appellant and the witnesses belong to the other group. We agree with the High Court that we should not lose sight of this fact. In our opinion, however, there are good grounds for accepting the evidence.

In the first place there is the fact, which is admitted by respondent No. 1 himself, that a mass conversion of a very large number of persons belonging to the Scheduled Castes to Buddhism took place at Nagpur on October 14, 1956 at a meeting which was presided over by Dr. Ambedkar. What took place at that meeting is set out in Ex. 66 which gives 'an account of the proceedings. It says that about 5 lakhs of persons attended the meeting. At that meeting Dr. Ambedkar was present along with Rev. Maheshthavir Chandramani who is a Bhikku. The Bhikku made Dr. Ambedkar and Mrs. Ambedkar recite the three refuges (Thrisathi) and five precepts in Pali, after which both of them garlanded the idol of Lord Buddha which had been installed in the pandal where Dr. and Mrs. Ambedkar, the Bhikku and other prominent people were sitting. Dr. and Mrs. Ambed-

165-11 kar then took 22 vows, which apparently he had himself prepared. Thereafter the mass-ordination took place at which those who, wished to be converted recited the three refuges three times. This event had attracted attention throughout the country and was given wide publicity, by-- the press which was well represented at the meeting. Respondent No. 1 has admitted that he was a member, of Dr. Ambedkar's party at that time and though he could not attend the conversion ceremony -he had not.-dissociated himself, from it. According to him the reason why he did not attend the ceremony was that he was then, busy with,, making arrangements.. at the, water works. for the supply of water to the lakhs of people, most of whom had come from the neighbouring villages to attend the ceremony. It is in the evidence of witnesses that at least lakhs of persons belonging to the Scheduled Castes were converted to Buddhism at that meeting and that the work of conversion went on even, after October 14, 1956 for quite some time. Another factor to be borne in mind is that prominent persons belonging to there Scheduled Castes were converted to Buddhism and it would be highly improbable, that respondent No. 1 who was a prominent member, of the. Scheduled Castes in Nagpur and a follower of Dr., Ambedkar would have remained aloof from the movement started by Dr. Ambedkar. The main object of Dr. Ambedkar was to secure for the members of the Scheduled Castes an honorable place in society and he felt that the various disabilities placed upon members of these castes were due to the fact that in Hindu religion to which they belonged, they had been accorded the lowest rank in society with the result that they had come to be regarded as untouchables. Undoubtedly, the caste system has virtually come to be regarded as an essential feature of Hindu society and, therefore, Dr. Ambedkar felt that the only way open to members belonging to the lowest group was to sever their connection completely from such a society. He found that Buddhism, the way or path of peace, not only, offered solace to the spirit but also social equality to all its members. Dr. Ambedkar was the unquestioned leader of the Scheduled Castes, at any rate in Maharashtra. It would, therefore, not be unreasonable to infer that those who had accepted his leadership and those who in addition held prominent places amongst people belonging to the Scheduled Castes should follow Dr. Ambedkar and renouncing Hinduism embrace like him, Buddhism. If this probability is borne in mind the evidence of the witnesses who have deposed to the fact of the actual conversion of respondent No. 1 to Buddhism would become more easily acceptable.

That, however, is not all. Corroboration of this evidence was sought to be supplied by the appellant from the conduct of respondent No. 1 subsequent to his conversion. For this purpose he has relied upon three matters: One is the signing of a declaration by respondent No. 1 along with some other persons to the effect that he had embraced Buddhism and that he, therefore, ceased to be any longer a member of the Scheduled Castes; the second is a wedding invitation subscribed to, amongst others, by respondent No. 1 on which the picture of Lord Buddha is inscribed: and the third is the conversion of a Shiva temple situate near the appellant's house to a Buddha temple.

The declaration is Ex. 42 and is dated July 5, 1957. It is to the following effect:

"To whomsoever it may concern:-

We, the following signatories, do hereby affirm that we embraced Buddha religion on 17-3-1957 and no longer since remain Harijans."

Then follow the names of ten persons, including P.W. 2 Akant Mate, P.W. 5 Devaji Bhagat and P.W. 10 Dongre. Each of them has signed therein against his name. The reason why this declaration came into existence is, according to the appellant, the following:

Elections had taken place to the Nagpur Corporation and a meeting was held on July 5, 1957 for selection of six additional members. One of the Corporators, Mr. Udhoji, raised a point of order to the effect that no member of the Scheduled Castes having been elected to the Corporation a person belonging to the Scheduled Castes was required to be selected under the provisions of the Nagpur Municipal Corporation Act. Respondent No. 1 was one of the persons who had already been elected to the Corporation and was present at the meeting. He, however, did not contest the statement of Mr. Udhoji to the effect that no person belonging to the Scheduled Castes had been elected. Apparently, the point of order was disallowed and selection of six members, none of whom belonged to the Scheduled Castes, took place. Immediately thereafter the declaration referred to above was signed by ten persons, including respondent No. 1, who had all been elected as members of the Municipal Corporation at the Corporation election. This was filed along with the writ petition presented before the High Court in which the selection made at the meeting of July 5, was sought to be quashed on the ground that no person belonging to a Scheduled Caste had been selected. Respondent No.1 admits that he did sign this declaration but in his written statement the reason given by him is that he did so under political pressure. In his evidence, however, he has given a different explanation. This is what he has said :

"Akant Mate came there with some writing and told us that it was the directive of the Scheduled Castes Federation that members elected on its tickets should sign it. I do not know how he got that directive from the Federation, and from whom he got it. The writing was in English and I signed upon it. Akant Mate told me that I should sign on the document, he would go and get signatures of other Corporators and give it in the Corporation office. I could not myself read the English typewritten material. Akant Mate told me that the President of the meeting gave the ruling in the information by the Commissioner that I and Mate' were members of the Scheduled Caste and that if this were not so, we would be able to get one more member and, therefore, I should sign on the document. My consent was not taken for filing the declaration in the High Court. I was not a party to the proceedings in the High Court, in connection with which the declaration was taken."

What he has said is, in substance, that he was duped by Akant Mate. There is thus a variation between his pleading and the proof adduced and in the circumstances we will be justified in rejecting his explanation. Once the explanation is rejected the declaration must be taken into account as a piece of corroboration of the fact that he had ceased to be a Hindu as he had been converted to Buddhism. Respondent No. 1 does not deny that the wedding invitation placed on record by the appellant bears his name as one of the hosts. The invitation pertains to the wedding of his daughters Lalita and Pushpa Lata and their respective bridegrooms were Sirish and Yashwant

Rao. At the top of the invitation are the usual words "Subh Langna" (auspicious wedding). Then there is a picture of Lord Buddha followed by the inscription "May victory and prosperity by yours-Obeisances to Buddha". It is well known that in Hindu weddings the invitations issued in an Indian language the picture of the Kuladaivata is generally printed and the blessings of the Kuladaivata are invoked. Had respondent No. 1 considered himself to be a Hindu he would have followed the usual practice. No doubt, sophisticated people, though still belonging to Hindu religion, have discarded the practice of printing the picture of the family deity on wedding invitations and of invoking the blessings of the deity. Respondent No. 1 does not suggest that he belongs to that class. Indeed, if that were so, there would have been no occasion to print the picture of Lord Buddha and seek his blessings. In this invitation the picture of the Kuladaivata was substituted by that of Lord Buddha. This is more consistent with Respondent No. 1 having become a Buddhist than with his remaining a Hindu. According to respondent No. 1 he did not know till after the Sakshyagandh (engagement) was over that either of the bride- grooms was a Buddhist. He says that a week before the marriages someone from the side of the bridegrooms met him and told him that the weddings had to be performed according to the Buddhist ritual and if he was not agreeable the engagements would be broken off. It was then that he first thought that the bridegrooms were Buddhists. However, he did not think it proper to break off the engagements. Now, if he were still a Hindu belonging to the Scheduled Castes it is unlikely that he would have reconciled himself with the idea of giving his daughters in marriage to non-Hindus, more particularly when the bridegrooms' side insisted on following the Buddhist ritual. He has, no doubt, tried to give an explanation for this curious conduct by saying that he treated Lord Buddha as the "11th (sic) incarnation" and that is why he had Lord Buddha's picture printed on the wedding invitation. That explanation cannot be easily accepted.

As regards the third circumstance there is the evidence of Budhaji Godbole, P.W. 11, and Kisan Shende, P.W. 14, in addition to that of the appellant. According to them respondent No. 1 converted the Shiva Temple in Gautamnagar into Buddha temple on June 6, 1959 and installed Lord Buddha's image at a function over which he presided and at which Dr. Y. B. Ambedkar, President of Buddhist Society was present. Respondent No. 1 had admitted most of the facts, as pointed out by the High Court itself. The variation between the contentions of the parties is this. According to respondent No. 1 there was a Shiva Temple on a plot of land in Gaddigudam at Nagpur. While laying a new road in the year 1932 or so this plot was taken over by the Nazul authorities and another plot was given for the Shiva Temple in exchange. But according to him, no Shiva Temple was at all constructed or Shiva Ling installed therein. This is obviously untrue. He admits that this plot " was managed by a Panch Committee" of which he was a member. For, without constructing a Shiva Temple on the plot there could have been nothing to manage by the Panch Committee. No doubt, he says that while he was Chairman of that Committee in the year 1959 or 1960 it was decided to construct a Shiva Temple thereon. But it is difficult to believe that the people of the locality would have waited for 28 years for taking the decision. He admits that a temple dedicated to Lord Buddha was constructed thereon as alleged by the appellant and his witnesses. It seems clear that the decision of the committee to which he refers related to the construction of this temple and not to a Shiva Temple which was already there. The evidence led on behalf of the appellant was to the effect that at the cere- mony held on June 6, 1959 the idol of Lord Buddha was in- stalled above the Shiva Linga, presumably meaning thereby that the Shiva Linga was overlaid with earth or bricks and on the top of it the image of Lord Buddha was installed. Referring to the evidence of Shende the High Court has

observed:

"The witness however does not say that he saw the removal of the old image of Lord Shiva or the Ling and the Pinda which were already there. On the other hand it is the case of Meshram that the Corporation had already given another plot to which the Shiva Mandir had long before been shifted and since this plot was idle, he gave it for the installation of Buddha's idol."

The observation of the High Court underlined by us is apparently based on a misreading of the evidence of respondent No. 1 and also ignores his plea on the point in his written statement. It is not his case that two plots were allotted for a Shiva Temple one of which was vacant. His case, as already stated, was that the plot given in exchange for the old one was never utilised and not that two plots were given, one of which was utilised. Again, the High Court has failed to appreciate properly the evidence of Budhaji Godbole. What he has said is this "One house away from the house of respondent No. 1 is a plot of land on which then stood a Shiva Temple. This plot stood in the name of the respondent No. 1. In that temple was Ling and Pind of Shiva..... From 6-6-1959 this temple has now become Buddha Vihar. On that day, the Ling and Pind were put underground and at that place was installed idol of God Buddha The installation of the image of God Buddha was done by Bhaiyasaheb Ambedkar. It was the respondent No. 1 who was the principal man in converting the Shiva temple into a Buddha Vihar."

There is no suggestion in his cross-examination that this witness had no personal knowledge of what he had deposed to. Since he has clearly spoken about the burial of the Shiva Linga and the installation of the image of Lord Buddha on top of it, he must be understood to mean that this was what happened in his presence and also in that of respondent No.1. Incidentally, it may be stated that this witness is also a convert to Buddhism. A reference may also be made to the evidence of the other witness Kisan Shende. The relevant portion of his deposition is as follows :

"The respondent No. 1 was the President of the function. The idol of Buddha was installed by Bhaiyasaheb Ambedkar on an ota which covered the old Ling and Pind representing God Shiv This part of evidence of this witness has not been challenged in cross-examination. There is no reason why this evidence ought not to be accepted, particularly when some of the essential facts deposed to by the witnesses have been admitted by respondent No. 1 himself. If we accept this evidence then the only conclusion which can emerge is that respondent No. 1 had ceased to be a Hindu. For, however great the admiration or regard a Hindu may have for Lord Buddha, he would shudder at the idea of desecrating a Shiva Linga in this manner or even of converting what was once a Shiva temple into a Buddhist temple. In our opinion, this would be the strongest circumstance corroborating the evidence of eye-witnesses regarding the conversion of respondent No. 1 to Buddhism.

It is contended on behalf of respondent No. 1 that there is a register of persons who had been converted to Buddhism and that the first respondent's name does not appear there. It is true that R.W. 5 Waman Godbole speaks of some register but his

evidence clearly shows that the register is not regularly maintained nor are the signatures of persons who had been converted taken according to the dates of conversion. There is nothing to show that it was obligatory on every person who had been converted to sign in the register. Moreover, a signature in such a register would at best be only a piece of evidence of the fact of conversion and nothing more. Absence of a person's signature in the register would not necessarily negative his being at all converted to Buddhism. Then it is said that only Bhikku is entitled to convert non- Buddhists to Buddhism. There is abundant evidence on record that at the conversion ceremony held on October 14, 1956 Dr. Ambedkar had told the new Buddhists that any one who had become a Buddhist could admit others to the fold of Buddhism. Apart from that we have been shown no authority to the effect that a person cannot become a Buddhist unless he is converted to Buddhism by a Bhikku. Buddhism was in essence also a protest against orthodoxy and the power of the priesthood. It would, therefore, be strange to say that for a non-Buddhist to become a Buddhist strict compliance with rituals is necessary. It is in evidence that at every conversion three vows had been repeated thrice. Five precepts had also to be repeated by those who offered them- selves for conversion. This was exactly what was done by Dr. Ambedkar, his wife and others at the mass meeting on October 14, 1956 and it is not suggested that what they did was inadequate and so they cannot be deemed to have embraced Buddhism from that date. It is, therefore, futile to say that others who went through the same procedure had not become Buddhists merely because no Bhikku had officiated at the function.

What cl. (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in *Karwade v. Shambhakar*(1) has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly into a religious state" and that for this purpose a mere declaration by person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New Word Dictionary : "to avow publicly; to make an open declaration of;..... to declare one's belief in : as, to profess (1) I.L.R. 1959 Bom.. 229.

Christ. To accept into a religious order." The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning "to declare one's belief in : as to profess Christ" is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change, in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word "profess" in the Presidential Order appears to have been used in the sense of an open declaration or practice

by a person of the Hindu (or the Sikh) religion. Where, therefore, a person says, on the contrary, that he, has ceased to be a Hindu he cannot derive any benefit from that Order.

Finally it is argued that the word Hindu is comprehensive enough to include a Buddhist and in this connection our attention is invited to Explanation 11 to cl. (2) of Art. 25 of the Constitution. Clause (1) of Art. 25 recognises, amongst other things, freedom to practise and propagate religion. Sub-clause (b) of cl. (2) runs thus :

"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

Explanation II' reads thus :

"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."

The definition of Hindu is expanded for the special purposes of sub-cl. (b) of cl. (2) of Art. 25 and for no other. Paragraph 3 of the Constitution (Scheduled Castes) Order reads thus .lm15 "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."

If it was intended that the word "Hindu" used in this paragraph should have a wide meaning similar to that in Explanation 11 just quoted the re would have been no need to make a mention of the Sikh religion. From the fact that a special mention is made of the Sikh religion it would follow that the word "Hindu" is used in the narrower sense of the orthodox Hindu religion which recognises castes and contains injunctions based on caste distinctions. For the foregoing reasons we are satisfied that respondent No. 1 had ceased to be a Hindu at the date of his nomination and that consequently he was ineligible to be a candidate for election from a constituency reserved for members of Scheduled Castes. In the circumstances the Tribunal was right in setting aside his election. Accordingly we allow the appeal, set aside the judgment of the High Court and restore that of the Tribunal. Costs throughout will be borne by respondent No. 1. Appeal allowed.