

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

G. Michael Vs. Mr. S. Venkateswaran, Additional Secretary to Government, Public (Elections) Department, Fort St. George, Madras

G. Michael Vs. Mr. S. Venkateswaran, Additional Secretary to Government, Public (Elections) Department, Fort St. George, Madras

SooperKanoon Citation : sooperkanoon.com/792467

Court : Chennai

Decided On : Nov-06-1951

Reported in : AIR1952Mad474; (1952)1MLJ239

Judge : Rajamannar, C.J. and ;Venkatarama Aiyar, J.

Acts : Constitution (Scheduled Castes) Order, 1950; [Constitution of India](#) - Article 341(1)

Appeal No. : Writ Petn. No. 601 of 1951

Appellant : G. Michael

Respondent : Mr. S. Venkateswaran, Additional Secretary to Government, Public (Elections) Department, Fort St. Ge

Advocate for Def. : Adv.-General for ;State Counsel

Advocate for Pet/Ap. : K. Venkatasubramania Aiyar, Adv.

Disposition : Petition dismissed

Judgement :

1. Article 330(1) of the Constitution provides that seats shall be reserved in the House of the People for the Scheduled castes. Article 332(1) similarly provides for

the reservation of seats for the Scheduled castes in the Legislative Assembly of every State. The expression "Scheduled castes" is defined in Article 366, Clause 24 as meaning:

"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 purpose of this Constitution."

Article 341(1) now runs as follows:

"The President may, with respect to any State, or where it is a State specified in Part A or Part B of the First schedule, after consultation with the Governor or Rajpramukh thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled castes in relation to that State."

In exercise of the powers conferred by Clause (1) of Article 341, the President made an order called the Constitution (Scheduled Castes) Order, 1950. The material provisions of this Order are paragraphs 2 and 3 which are as follows:

"2. Subject to the provisions of this Order, the castes, races or tribes, or parts of, or groups within, castes, races, or tribes, specified in Parts 1 to XVI 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 Parts of that schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hinduism shall be deemed to be a member of a scheduled caste."

2. The petitioner alleges that he is a member of the Paraiyan caste which is item 64 in Part V of the Schedule to the Scheduled Castes Order. Admittedly, he is a convert to Christianity. He therefore would be a person professing a religion different from Hinduism and therefore under paragraph 3 of the Scheduled Castes Order would be deemed not to be a member of a scheduled caste. He desires to

stand as a candidate for a seat reserved for the Scheduled Castes and he can do so only if he is deemed to be a member of a Scheduled Caste. As the aforesaid provision prevents him from so standing, he has filed the above application for adequate relief from this Court.

3. Learned counsel for the petitioner contended that paragraph 3 of the Order in question is not valid as it is beyond the power conferred on the President by Article 341(1). The President can no doubt specify the castes or parts of or groups within castes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes. But he cannot artificially or arbitrarily create a part of or group within a caste. The part or group must have a separate objective existence independent of the President's fiat. The President can only specify a part or group which has such an independent existence, even before he specifies it. He cannot create a part or group by specifying it. He cannot, for instance, say that only the illiterate members of a particular caste shall be deemed to be a Scheduled Caste or members of the caste who do not own any property. No doubt, persons could be selected on such a basis and formed into a part or group; but Article 341 does not contemplate such a part or group. So ran one part of the argument of the petitioner's learned counsel.

4. The other part of the argument was based on the form of the rule embodied in paragraph 3. It is negative in character it was submitted. It assumes that a particular person would otherwise be a member of a scheduled caste but because the person happens to profess a religion other than Hinduism he is taken out of the category of a scheduled caste. This is beyond the powers of the President under Article 341.

5. The second part of the argument does not call for much discussion. It is true that the rule is in a negative form; but reading paragraphs 2 and 3, the result is as if the Hindu parts of or the Hindu groups within the castes specified in the schedule shall be deemed to be scheduled castes. We do not agree with the petitioner's learned counsel that the words "notwithstanding anything contained in paragraph 2" necessarily imply that a person who professes a religion different from Hinduism is a member otherwise of a scheduled caste. Such expressions are

almost in-variably used in provisions inserted by the legislature by way of abundant caution to re-move any possible doubt which might arise in the application of a substantive provision. We must take it that what the President has specified is that part of or group within the castes enumerated by him which consists of persons professing Hinduism.

6. Mr. Venkatasubramania Iyer learned counsel for the petitioner incidentally addressed an interesting argument in which stress was laid on the expression "professes a religion different from Hinduism". Learned counsel asked, what about a free thinker, an agnostic or an atheist? He would not be professing any religion at all. He also dwelt on the extremely liberal tenets of Hinduism which can assimilate every one of the religions of the world.

7. As this case must be decided without the help of any decided authority and more or less as a matter of first impression, it will not be out of place to set out what appears to me to be the background and the basis of the provisions relating to the scheduled castes in our Constitution. The preamble to the Constitution contains the solemn resolution of the people of India to secure to all its citizens "justice, social, economic and political" as well as "equality of status and of opportunity." Though the general rule is equality, equal protection of the laws and non-discrimination, (vide Articles 14 and 15(1)), the scheduled castes and tribes are placed in a comparatively favoured position. The new clause added to Article 15 by the Constitution (First Amendment) Act 1951 says that nothing in Article 15 or in clause 2 of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

Article 16(4) empowers the State to make provision for the reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 335 specifically enjoins that the claims of the members of the scheduled castes and the scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. It

has already been mentioned that Arts. 330 and 332 provide for the reservation of seats for the scheduled castes in the legislatures of the country.

Article 338 contemplates the appointment by the President of a Special officer for the scheduled castes and scheduled tribes whose duty is to investigate all matters relating to the safeguards provided for them under the Constitution and report to the President upon the working of those safeguards. These reports are to be laid before each House of Parliament. Under Article 340(1) the President may appoint a Commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to make recommendations as to the steps, that should be taken by the Union or any State to remove such difficulties and to improve their condition. Besides these imperative provisions of the Constitution, there is Article 46 in the Part embodying the directive principles of the State Policy which is in the following terms:

2. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation."

It must be mentioned that this category of scheduled castes is not an original creation of the new Constitution. It is a part of the legacy from the British days. The Government of India Act, 1935, provided for reservation of seats for scheduled castes. Paragraph 26 of schedule I of the Government of India Act, 1935 defined scheduled castes as: "such castes, races or tribes or parts of or groups within castes, races, or tribes being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as the 'depressed classes', as His Majesty in Council may specify." (8) The Government of India (scheduled castes) Order 1936, corresponds to the Constitution (Scheduled castes) Order, 1950. Paragraph 2 of the Order declares that the castes, races, or tribes, or parts of or groups within castes, races, or tribes specified in parts I to IX of the Schedule to the Order shall be deemed to be scheduled castes. Paragraph 3 is as follows:

"Notwithstanding anything in the last preceding paragraph (a) no Indian Christian shall be deemed to be a member of a scheduled caste; (b) in Bengal no person who professes Buddhism or a tribal religion shall be deemed to be a member of any scheduled caste;

and if any question should arise as to whether any particular person does or does not profess Buddhism or a tribal religion, that question shall be determined according to the answers which he may make, in the prescribed manner, to such questions as may be prescribed."

9. An Indian Christian was defined in Schedule I as meaning a person who professes any form of the Christian religion and is not a European or an Anglo-Indian.

10. It is obvious, therefore, from the several provisions of the present Constitution to which I have referred and of the previous Government of India Act that certain sections of the people are deemed to be depressed and backward socially and economically and therefore politically. Article 46 of the present Constitution even goes further and suggests that they have been the victims of social injustice and exploitation.

11. It is a matter of common knowledge that the institution of Caste is peculiarly Indian. Caste as we now understand it is a social combination the members of which are enlisted by birth and not by enrolment (vide Ganapathi Aiyar's Hindu law, page 410). Whatever may be the origin of the various castes and sub-castes, it is likely that at its inception the caste system was much more elastic than it grew to be in later times. It might be, as some scholars suggest, that the primary division into four castes was based upon differences of colour and race; but it is equally clear that the castes and certainly many, if not most, of the sub-castes were economic occupational groups.

Plato in his Republic envisaged the division of society into classes based on differences of function and occupation. It was a part of his definition of justice that the members of each class (caste) that is followers of each occupation should know and attend to their business and did not aspire to perform the functions of

members of different castes. An almost identical principle is enunciated in the Gita which dwells on the importance of following one's own 'dharma' in preference to 'paradharm'. There can be no doubt, as a modern English philosopher has said, that the caste system in its early stages:

"represents one of the most successful applications of a philosophic principle to the world of concrete fact that mankind has contrived."

At the same time it is a matter of history that the system gradually hardened into a rigid frame work based upon heredity. Inevitably it gave rise to gradation which resulted in social inequality and put a premium upon snobbery.

Social snobbery is not the monopoly of any race or country. But the caste system tended to develop, as it were, a group snobbery, one group, caste or sub-caste, looking down upon another group. At the bottom of the scale of social values were the members of the fifth caste, the panchamas, who were again members of several well-defined sub-castes. Even the best of human institutions, when it becomes mechanical and decadent, becomes also oppressive. This happened also to the caste system in India. The result was the perpetration of a certain amount of social injustice by the so called higher castes on the lower castes and naturally the lowest of the castes became gradually the "depressed classes".

12. Such is the historical background for the several provisions in the Government of India Act and in the present Constitution which attempted and attempt to accord specially favourable treatment to these depressed classes. It is the implied assumption that the higher castes would not properly represent the needs of the lower castes that is the basis of the principle of reservation of seats in the legislature for the depressed classes or the scheduled castes.

13. It cannot be denied that whatever might be the philosophical doctrine of what we now call Hinduism, so far as social customs and usages went, the caste system became an integral part of Hindu religion. It is true that religion in one sense has nothing to do with social conduct; but ethics being founded ultimately on religious beliefs and doctrines--and in so far as ethics provided the standard for social life -- it was inevitable that religion should be mixed up with social conduct.

That is why it has often been said that the caste system is a part of Hindu religion.

14. As I said before, caste system has become an integral feature of Hindu society and is bound up with the practice of Hindu religion. The well accepted scriptures of the Hindus contain reference to castes as having even a divine origin. I need only give two instances, viz, the famous description in the 'Purusha Suktha' and the equally well known passage in the 'Gita' in which Lord Krishna who is accepted by the Hindus as a divine incarnation speaks of the four 'varnas' having been created by him ('chathurvarniam mayasrishtam'). I am not unaware of the new interpretation sought to be put on these references and the attempt made by several modern scholars to explain the caste system as being founded on a natural division of persons according to their 'gunas', (qualities), aptitudes and conduct. But it cannot be gainsaid that in actual practice the caste system is based strictly on birth.

15. When I speak of Hinduism, I am actually conscious of the vague connotation of that word:

"Hinduism is not a religion in the sense in which we now understand the word. The word is not Indian in origin; nor was it ever used by the Hindus as the same name of their religion" (The Cultural Heritage of India, Vol. I, page 150).

But the word has come to stay and convenience requires that the word should be retained to describe a typical mode of life inclusive of religion and philosophy in the strict sense of those terms. It has been rightly said that:

"Hinduism is thus less a religion in the western sense of the word than a fellowship of those who accept the immutable law; of right conduct and fashion their lives after the pattern whose lines philosophy; religion and ethics have combined to trace."

16. it must, however, be acknowledged that in spite of the fact that the doctrines of Hinduism as a religion cannot be reduced to a formal creed, it is not difficult to differentiate those who profess Hinduism from those who profess other religions like Christianity and Islam. Mr. Venkatasubramania Aiyar said that Hinduism is so

all comprehensive that it can embrace every religion in the world. This is true only if by Hindu religion one understands Hindu religious philosophy. I do not think it is true if one takes into account Hindu religious practice. For certain purposes, Buddhism, Jainism and Sikhism have been considered to be part of Hinduism. In our present Constitution itself explanation (2) to Clause 2 of Article 25 says that the reference to Hindus in Sub-clause (b) of clause 2 shall be construed as including a reference to persons professing the Sikhs, Jains or Buddhist religion. Mr. Venkatasubramania Aiyar said that it would not be accurate to speak of Buddhism as something different from Hinduism and relied on the fact that Buddha is treated as one of the Avatars of Vishnu. But this is overlooking the fact that though some Hindus might consider so, the Buddhist would never accept that Buddha is an Avatar of a Hindu deity. So there is a clear difference, doctrinal and practical between Hinduism and Buddhism.

17. Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an integral part of their creed or tenets. Is it different in India? Mr. Venkatasubramania Aiyar frankly confessed that so far as Islam is concerned there is no question that it does not tolerate any difference based on caste distinction. A member of one of the castes or sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. Learned counsel also conceded that generally this is so even when there has been a conversion to Christianity. But he said that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted. I am prepared to accept that instances can be found in which in spite of conversion, the caste distinctions might continue. This is somewhat analogous to cases in which even after conversion certain families and groups continue to be governed by the law by which they were governed before they became converts. But these are all cases of exception and the general rule is conversion operates as an expulsion from the caste; in other words, a convert ceases to have any caste.

17a. In my opinion, paragraph 3 of the Constitution (Scheduled castes) Order proceeds on the general assumption and does not take notice of individual exceptional instances. When in any locality, in spite of conversion caste distinctions continue as a general rule, then the President evidently takes notice of it. The proviso to paragraph 3 of the Order illustrates this. Apparently in Punjab and the Patiala and East Punjab States Union members of some of the castes in spite of professing the Sikh Religion, continue to have caste distinctions. That is why the members of those castes are deemed to be members of the scheduled caste whether they profess the Hindu or the Sikh religion. Presumably on the information which must have been placed before the President he was not convinced that as a general rule the persistence of caste differences obtained in other parts of the Union in spite of conversion to other religions. It may be that the President was mistaken or his information was incomplete; but I do not think it is open to us to sit in judgment over his decision.

18. I have no hesitation in holding that paragraph 3 should be read in conjunction with paragraph 2 and so read, the Order in effect specifies those parts of, or groups within the enumerated castes which profess the Hindu religion and directs that they should be deemed to be scheduled castes. Though in form paragraph 3 is negative in substance the definition is positive.

19. I do not think undue stress should be laid on the word "profess". I think the expression "profess" is intended to have the same meaning as the expression "belongs to" and a person belongs to a religion either by birth or by conversion. Mere sympathy with or admiration for particular tenets of any religion by a person who was not born in it and who has not been converted to it would not bring him within the meaning of the expression "professing a particular religion." Equally if a person has been born into a particular religion and has not been converted to another religion the mere fact that he is of an unorthodox type or has no belief personally in the tenets of that religion would not take him out of the category of a person professing that religion. To give an instance a person born of Hindu parents and who has not been converted to any other religion would not cease to be a Hindu merely because he does not believe in the Vedas or has cultivated the habit of beef eating. This would be so for the application of the personal law to

him. Likewise it would be so for political purposes.

20. In view of what I have said before, it is clear that the President has not arbitrarily specified a part or group which has no independent objective existence. The Hindu section of a particular scheduled caste has certainly such an existence, though in exceptional cases some converts might still be members of the caste to which they belonged before conversion.

21. In my opinion, the Constitution (Scheduled Castes) Order is valid and within the powers of the President. The petition is therefore dismissed. There will be no order as to costs.

Venkatarama Aiyar, J.

22. I agree.

23. 'By Court': We certify that this case involves a substantial question of law as to the interpretation of the Constitution and in particular Article 341.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com