

M. Thangamuthu Vs. M. Chandra and ors.

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Court : Chennai

Decided On : Dec-02-2008

Reported in : (2009)1MLJ152

Judge : C. Nagappan, J.

Acts : [Representation of the People Act, 1951](#) - Sections 3, 5, 81, 100(1), 101 and 125(A); Right to Information Act (RTI); Evidence Act - Sections 35, 61 and 64; Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act, 1993; Constitution (Scheduled Castes) Order, 1950; [Constitution of India](#) - Article 332; Representation of the People Rules

Appeal No. : Election Petition No. 7 of 2006

Appellant : M. Thangamuthu

Respondent : M. Chandra and ors.

Advocate for Def. : T.V. Ramanujam, Sr. Counsel for P.N. Prakash, Adv. for Respondent No. 1 and ;R. Thiagarajan, Sr. Counsel for K.G. Senthilkumar for Respondent No. 2

Advocate for Pet/Ap. : S. Thiruvenkadasamy, Adv. for U.M. Ravichandran, Adv.

Judgement :

ORDER

C. Nagappan, J.

1. The petitioner has filed the election petition under Section 81 read with Sections 5(a), 100(1)(a) and 125(A) of the [Representation of the People Act, 1951](#) seeking a declaration that the election of the first respondent herein/returned candidate from No. 209, Rajapalayam (SC) Assembly Constituency is void and to declare the petitioner or other eligible candidate as duly elected as a Member of the Tamil Nadu Legislative Assembly from the said Constituency in the election held on 8.5.2006.

2. According to the election petitioner, nominations were called for from the candidates for the 13th Assembly Election in the State of Tamil Nadu and he filed his nomination as an independent candidate in No. 209, Rajapalayam (SC) Assembly Constituency and the nominations were opened on 21.4.2006 and after scrutiny, there were 13 candidates in the fray in the above Constituency and the election petitioner was allotted 'Finger Ring' symbol. It is further stated by the election petitioner that the first respondent contested as a candidate of All India Anna Dravida Munnetra Kazhagam (AIADMK) and was allotted 'Two leaves' symbol and the second respondent contested as a candidate of Dravida Munnetra Kazhagam (DMK) and was allotted 'Rising Sun' symbol and the third respondent as a candidate of Bahujan Samajvadi Party was allotted 'Elephant' symbol and the fourth respondent as a candidate of Bharathiya Janatha Party was allotted 'Lotus' symbol and the fifth respondent as a candidate of Desiya Murpokku Dravida Kazhagam was allotted 'Kottumurasu' symbol and the sixth respondent as a candidate of All India Forward Block was allotted 'Lion' symbol and the seventh respondent as an independent candidate was allotted 'Match Box' symbol and the eighth respondent as an independent candidate was allotted 'Axe' symbol and the ninth respondent as an independent candidate was allotted 'Aeroplane' symbol and the tenth respondent as an independent candidate was allotted 'Cricket Bat' symbol and the eleventh respondent as an independent candidate was allotted 'Television' symbol and the twelfth respondent as an independent candidate was allotted 'Banana' symbol.

3. In Paragraph No. 5 of the election petition, the election petitioner has stated that No. 209, Rajapalayam (SC) Assembly Constituency is a Reserved Constituency being Reserved in accordance with the provisions of Article 332 of [Constitution of India](#) and as per Section 5 of the [Representation of the People Act, 1951](#), only the candidates belonging to Scheduled Caste are eligible to contest election from the said Constituency and persons belonging to other Communities are disqualified from contesting.

4. The election petitioner in paragraph No. 6 has averred that the first respondent filed her nomination paper to contest from the above referred to Constituency claiming herself to be a member of Scheduled Caste by filing false declaration and suppressing material facts and procuring and supplying false documents.

5. In paragraph No. 7, the election petitioner has stated that the original name of the first respondent was Glory Chandra and she is born to Christian parents namely Navakumar and Santhosapackkiam of Erumalainaickenpatti Village and all of them are Christians by birth and following Christianity till date and Navakumar is working at Madurai Christian Mission Hospital.

6. The election petitioner has further averred in paragraph No. 8 that the date of birth of the first respondent is 9.6.1974 and she studied in CSI High School, Batlagundu and her admission number is 1573 as on 10.6.1987 and as per her school records, she belongs to Indian Christian Pallan Community and these material facts were suppressed by her knowing fully well that if this is disclosed, she has no eligibility to contest the election in the Reserved Constituency.

7. In paragraph No. 9, the election petitioner has stated that the first respondent has not only suppressed the material fact that she was born and brought up as Christian but also deliberately procured false documents to substantiate her false claim as a member of Scheduled Caste by creating school certificate as if she had passed seventh standard from Government High School, Devathanampatty and has made a declaration to that effect in the affidavit filed along with her nomination paper and the Headmaster of Devathanampatty High School had issued a certificate stating that no such person studied in that school during 1986-87 as claimed by the first respondent.

8. It is further averred in paragraph No. 10 that the certificate issued by the Headmaster of CSI High School, Batlagundu and the Headmaster of Government High School, Devathanampatty would explicitly prove the misdeeds of the first respondent and her ineligibility to contest the election in the Reserved Constituency and the election petitioner on verification of records came to know that the declaration of the returned candidate before the Election Commission that she studied upto seventh standard in the Government High School, Devathanampatty is false.

9. In paragraph No. 11, the election petitioner has stated that the first respondent has procured certificate from Rajapalayam Tahsildar as if she belongs to Scheduled Caste and she would have procured the certificate by producing these false documents and suppressing these material facts and hence the certificate issued on the basis of false particulars is liable to be neglected, more particularly when the certificate was issued during 1997 before the date of issuance of clarification of the Government in Letter No. 81 dated 19.9.2000 and it is pertinent to note that when anyone converts to Christianity, he is ineligible to claim his rights or privileges of a member of Scheduled Caste.

10. The election petitioner has averred in paragraph Nos. 12 and 13 that the first respondent had committed fraudulent acts and deeds to avail the benefits provided for the members of Scheduled Caste and therefore her election as a Member of Legislative Assembly is liable to be set aside as she does not have eligibility to contest the election in the Reserved Constituency as a member of Scheduled Caste. The election petitioner has further stated that since the first respondent does not belong to Scheduled Caste category, she is ineligible to represent the Scheduled Caste Community and she is liable to be disqualified as per the provisions contained in Section 5 of the Representation of the People Act.

11. It is further averred in paragraph Nos. 14 and 15 that the parents of the first respondent namely Navakumar and Santhosapackkiam were professing Christianity even prior to giving birth to the first respondent Chandra alias Glory Chandra and the first respondent was born and brought up as a Christian and till date, she profess Christianity and it is well known to the members of the society,

more particularly to (1) Mrs. Deivathai, wife of Suruli, Sundararajapuram, (2) T.P. Paulsamy, Ganapathi Sundaranatchiyarpuram and (3) Rajaiya, Ayan Kollankondan, who are having close contact with the family of the first respondent. The election petitioner has further averred that the marriage of the first respondent with Soosaimanickam alias Murugan got solemnized as per Christianity and till date, they follow Christianity and they are members of 'Thuya Sahaya Annai Alayam'.

12. In paragraph No. 16, the election petitioner has further stated that the election of the first respondent has to be declared as void on the grounds mentioned above and the petitioner or other eligible candidate has to be declared elected from No. 209, Rajapalayam (SC) Assembly Constituency in the election held on 8.5.2006.

13. The election petitioner in paragraph Nos. 17 and 18 has averred that the election petition having been filed within 45 days from the date of declaration of results, is within time. It is further stated by the election petitioner that he has furnished the full facts and material particulars about the ineligibility of the first respondent and in view of the same the result of the election in so far as it concerns the first respondent has been materially affected. In paragraph No. 19, the election petitioner has mentioned about the various dates on which the cause of action arose for filing the election petition.

14. The first respondent in her counter affidavit has stated that she belongs to Scheduled Caste Community (Pallan) and recognized by the members of the Community as such and referring to allegations in paragraph No. 6 of the election petition, she has further stated that she filed her nomination paper as a member belonging to Scheduled Caste Community to contest in the 13th Assembly Election from the Reserved Constituency. The first respondent has denied the allegation that she filed false declaration suppressing material facts by procuring and supplying false and frivolous documents before the Returning Officer. According to the first respondent, the declaration was prepared by her brother Mr. Sudhakar Gnanaraj since she was away to make arrangements for canvassing for the ensuing election and it is her brother Mr. Sudhakar Gnanaraj who got the declaration ready, which is a typed matter. It is further stated by the first

respondent that Mr. Sudhakar Gnanaraj studied in Government High School, Devathanampatty which is a co-educational school and he assumed that the first respondent being her sister, would have studied in that school and mentioned so in the declaration and the first respondent came to Virudhunagar only on the morning of 20.4.2006 which was the last day for submitting the nomination papers and everything was done in a hurry and her brother Mr. Sudhakar Gnanaraj informed her that he prepared the nomination papers and it is enough if she signs and she signed the declaration in a hurry because she had no reason to suspect that any mistake would have occurred and the same was presented. The first respondent has further stated that her brother Mr. Sudhakar Gnanaraj has committed a mistake in mentioning Government High School, Devathanampatty of Theni District and it is an inadvertent error that has crept in and that is sought to be made as a big issue by the election petitioner only for the purpose of the election petition.

15. Referring to the allegations in paragraph No. 7 of the election petition, the first respondent has stated that she is a Hindu on the relevant date and she has converted to Hinduism in 1994 through the Arya Samaj, Madurai and the certificate dated 27.8.1994 issued by Arya Samaj is filed along with the counter statement. The first respondent has further stated that her husband got converted to Hinduism in the year 1975 itself and the marriage between her and her husband Murugan took place on 23.1.1995 and the marriage was conducted by village Nattamai as per the custom and practice in the Community to which the first respondent belongs and though her husband was a Hindu from 1975 onwards, she is a Hindu from 1994 onwards and the Pallan Community, which is a Scheduled Caste community, have formed themselves as Devendrakula Velalar Samootham and the conversion to Hinduism by the first respondent and her husband has been accepted by the Community and the Community recognized them as its members and they got married as per the custom and practice in the said community. It is further stated by the first respondent that her father Navakumar got separated from her mother somewhere in the year 1987 and from then onwards, her mother has been living along with her elder sisters and the first respondent's father Navakumar got married again with another lady by name Shanti and living separately and he has no contacts with the family after 1987.

According to the first respondent, she and her husband belong to Hindu Pallan Community and recognized and accepted by the Community as such and her mother Santhosapackkiam has been a Hindu throughout and Santhosapackkiam's entire family continued to be Hindus even as on date and the first respondent understands that the marriage between her parents took place at her mother's place at Erumainaickenpatti as per the custom of Hindu Pallan Community.

16. Referring to allegations in paragraph No. 8 of the election petition, the first respondent has stated that she studied in CSI High School, Batlagundu but her brother Mr. Sudhakar Gnanaraj committed a mistake while preparing the declaration and the first respondent has signed the declaration in a hurry since it was the last day for filing the nomination papers and the inadvertent mistake committed by her brother Mr. Sudhakar Gnanaraj is now sought to be twisted by the election petitioner. It is further stated by the first respondent that on the date she filed her nomination papers, she belonged to Scheduled Caste Community and has validly contested the election and has been validly elected and everyone in the Community knows that the first respondent belongs to Scheduled Caste Community and that is why no one objected to it and the petitioner raised no objection and in fact the first respondent contested the local body elections in the reserved constituency to the knowledge of the petitioner and no one objected to the same because they know the truth that the first respondent belongs to Pallan Community.

17. Denying the allegations in paragraph No. 9 of the election petition as not true, the first respondent has stated that she belongs to Pallan Community which is a Scheduled Caste community and the community has recognized and accepted her as such and she has not produced any school certificate before the Returning Officer and she has produced a community certificate before the said Officer and as explained already, the mistake in the declaration was committed by her brother Mr. Sudhakar Gnanaraj and the first respondent has not produced any school certificate from Government High School, Devathanampatty as alleged by the petitioner.

18. Denying the allegations in paragraph No. 10 of the election petition, the first respondent has stated that she studied in CSI High School, Batlagundu and she has not committed any misdeeds as falsely alleged and she is eligible to contest the election in the reserved constituency and an inadvertent mistake has crept in the declaration. Regarding the allegations in paragraph No. 11 of the election petition, the first respondent has stated that Rajapalayam Tahsildar has issued the community certificate after following the procedure and after verifying the documents and the first respondent had not given any false particular to the Tahsildar. According to the first respondent, the Community Certificate issued by the Rajapalayam Tahsildar is perfectly valid in law and the clarification of the year 2000 is not relevant for the purpose of this case and the first respondent is eligible and entitled to the rights and privileges as a member of the Scheduled Caste Community.

19. Denying the allegations in paragraph No. 12 of the election the first respondent has stated that she is not guilty of any fraudulent act and she has got eligibility and she is not disqualified and her election is perfectly valid and not liable to be set aside. The allegation in paragraph No. 13 of the election petition alleging that the first respondent does not belong to Scheduled Caste community and ineligible to represent the said community, is denied by the first respondent as not true.

20. Denying the allegations in paragraph No. 14 of the election petition, the first respondent has stated that her mother Santhosapackkiam continues to be a Hindu throughout and the first respondent got herself converted to Hinduism in the year 1994 and the certificate issued by Arya Samaj, Madurai is also produced. According to the first respondent, the names of three obliging persons are mentioned in paragraph No. 14 of the election petition to give false evidence and as far as Deivathai is concerned, she is the wife of one Suruli and Suruli is working in a ration shop and as a staunch supporter of DMK party, he openly canvassed for the said political party and was kept under suspension in the year 2001 and because of political rivalry, false evidence is sought to be let in and Deivathai is not competent to speak anything and she is being prepared to give false evidence against the first respondent. It is further stated by the first respondent that as far as T.P.Paulsamy is concerned, he is the Union Deputy Secretary of DMK political

party in Rajapalayam Union and as far as Rajaiya is concerned, his brother-in-law contested for the post of Union Councilor in Rajapalayam Union against the first respondent and lost in the election and because of political rivalry, Rajaiya has been planted as witness and Deivathai and Paulsamy do not belong to the village of first respondent and the allegation that all the three persons had close contact with the family of the first respondent is not true.

21. Referring to the allegations in paragraph No. 15 of the election petition, the first respondent has stated that the marriage between her and her husband Murugan took place as per the custom and practice in the Hindu Pallan Community in her husband's house in the presence of village Nattamai, who took the Thali and gave it to her husband to tie it around the neck of the first respondent and at the time of marriage, a sum of Rs. 250/- was given by the first respondent's husband's family to the community known as Devendrakula Velalar Samootham. The first respondent has further stated that the allegations that the husband of the first respondent is a member of 'Thuya Sahaya Annai Alayam' and still follows Christianity are not true and according to the first respondent, her husband used to give donation to 'Thuya Sahaya Annai Alayam' and by mistake, in the printed material, her husband's name has been mentioned in some 'Pangu Kudumba Pathivedu' and in fact the author of the printed material, Father Selvaraj has given a letter making it clear that the mistake has occurred while printing the said Pathivedu and the husband of the first respondent is not a member of 'Thuya Sahaya Annai Alayam' and the letter is also filed.

22. Denying the allegations in paragraph No. 16 of the election petition, the first respondent has stated that she has been validly elected and her election is not void and the election petitioner has to plead everything and cannot reserve anything further and the petitioner wants to have a roving enquiry which is not permissible in law.

23. The first respondent has denied the allegations in paragraph Nos. 17 and 18 of the election petition and has stated that she has not suppressed any material fact and she has specifically denied the allegation that the result of the election in so far as the first respondent is concerned has been materially affected, as not true.

24. Denying the allegations in paragraph No. 19 of the election petition, the first respondent has stated that the petitioner has no cause of action to file the election petition and it has been filed because of political rivalry and the petitioner is not entitled to any of the reliefs prayed in the election petition. The first respondent has further stated that this Court in the decision in W.P. No. 29822 of 2004, dated 4.11.2006, referred to the decision of the Apex Court dealing with the legal position of the person who got converted into his original religion and has held that the writ petitioner who was born to Christian parents got re-converted to Hinduism and the reconversion was accepted by the community as a whole and he was accepted as a member of the community and applying the above ratio, the first respondent has never lost her caste in the first instance. According to the first respondent, her ancestors originally were Hindus belonging to Pallan Community and there was conversion into Christianity due to various reasons but later the first respondent renounced Christianity and her conversion into Hinduism was recognized by Hindu Pallan Community and hence she belongs to Hindu Pallan Community which is a Scheduled Caste Community.

25. The second respondent in his counter statement has stated that the averments and allegations made by the election petitioner against the first respondent are substantially correct and valid and he also contested as a candidate of Dravida Munnetra Kazhagam in the 13th Assembly Election from No. 209 Rajapalayam Assembly Constituency (S.C.) under the symbol 'Rising Sun' and was polled 57827 votes whereas the first respondent secured 58320 votes and the first respondent was declared as returned candidate on a margin of 493 votes.

26. The second respondent has further stated that Rajapalayam Constituency being a reserved constituency, only candidates belonging to Scheduled Caste are eligible to contest the election from the said Constituency and others are disqualified and the first respondent filed her nomination claiming her status as that of a scheduled caste by making a false declaration and by producing false documentary evidences before the Returning Officer at the time of filing the nomination. The second respondent has further stated that the first respondent is a born Christian to her parents namely Navakumar and Santhosapackkiam of Erumalainaickenpatti village, who are also Christians by birth and they have been

following the said religion at all times and the father of the first respondent has also been working at Madurai Christian Mission Hospital. According to the second respondent, the averments made by the election petitioner in paragraph Nos. 8 and 9 of the election petition against the first respondent are true and correct and the second respondent has further stated that the first respondent's name has been mentioned as Glory Chandra in the school records and even in the voters list published in the year 1999, her name has been mentioned as Glory Chandra and the first respondent has gone to the extent of proclaiming herself as Scheduled Caste suppressing the religion which she and her family members have been professing till this date.

27. It is further stated by the second respondent that the certified copy of the birth extract issued by the Headquarters, Deputy Tahsildar of Periyakulam indicates that while registering the birth of the daughter of the first respondent born on 9.7.1997, the first respondent has given her name as Glory and her husband's name as Susai Manickam and the said document is a public document, in which the first respondent has shown her religion as Christian.

28. According to the second respondent, the permanent community certificate also appears to have been secured by the first respondent using her political influence and he reliably understands that when the first respondent made a request for community certificate, the Tahsildar of Rajapalayam has returned the application to Ayankollankondan Revenue Inspector on 4.4.1997 by proceedings No. 843/97 raising query about the first respondent's community and if the entire file relating to the community certificate is called for and perused, it can be seen that the community certificate has been issued throwing all norms to the winds. The second respondent has further stated that another certificate of birth issued by Joint Sub Registrar II of Periyakulam dated 18.1.2007 issued to a voter under Right to Information Act, is now available with the second respondent and being produced with the counter statement, which would show that the father and mother of the first respondent have mentioned their religion as Christian Pallar while registering the birth of their son on 16.8.1980. According to the second respondent, the voters list for Andipatty Constituency published in the year 1999 reflects the name of the first respondent as Glory Chandra and her parents as

Navakumar and Santhosapackkiam and in the telephone directory 2000 issued in Virudhunagar Telecom District, the telephone number 45386 stood in the name of the first respondent's husband as Susai Manickam at Ayankollankondan village and if the above mentioned facts are taken into consideration, the first respondent cannot be treated as Scheduled Caste candidate and her election from the reserved constituency has to be declared as invalid.

29. The second respondent has further stated that he understands that the first respondent is proclaiming herself as Scheduled Caste based on alleged certificate issued by Arya Samaj, Madurai which cannot have any probative value when the first respondent has not followed any norms prescribed under the Government orders made for issuing permanent community certificate. According to the second respondent, the averments made by the petitioner in paragraph Nos. 11 to 16 of the election petition against the first respondent are correct and the second respondent has further stated that the first respondent has been shown as the person belonging to Christian religion in the public records and therefore it is futile on the part of the first respondent to claim her social status as Scheduled Caste while contesting the Assembly Election from Rajapalayam Constituency. It is further stated by the second respondent that the first respondent did not issue gazette notification notifying the change of her name or religion. According to the second respondent, in view of the false claim made by the first respondent regarding her social status, she has to be disqualified and consequently the declaration declaring her as returned candidate has to be set aside. It is further stated by the second respondent that in the event of the Court holding that the election of the first respondent is materially vitiated, instead of ordering re-election, the second respondent who belongs to Scheduled Caste and who got polled the next highest votes, has to be declared as returned candidate of Rajapalayam Constituency.

30. Respondents 3 to 12 are called absent and set exparte and Respondent No. 13, the Returning Officer, was struck off.

31. The following issues have been framed for trial:

1. Whether the First respondent/Returned candidate suppressed the material fact that she belongs to Indian Christian Pallan Community as per her school records.
2. Whether the First respondent/Returned candidate made a false declaration relating to her community status and school education in her nomination as belonging to scheduled caste.
3. Whether the First respondent/Returned candidate converted herself to Hinduism in 1994 through the Arya Samaj, Madurai and whether the same was accepted by the Hindu Pallan community.
4. Whether the Election petitioner is entitled for a declaration that the election of the First respondent/Returned candidate is void on the ground that she was not qualified to contest the election in the Reserved Constituency.
5. Whether the Election petitioner is entitled for a further declaration as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 209, Rajapalayam (SC) Assembly Constituency, Tamil Nadu in the election held on 8.5.2006.
6. To what other reliefs the petitioner is entitled to.

Issue Nos. 1 TO 3.

32. This election petition is by an unsuccessful candidate seeking a declaration that the election of the first respondent in the 13th Assembly Election to the State of Tamil Nadu held on 8.5.2006 from No. 209, Rajapalayam (SC) Assembly Constituency is void and for a consequential relief that he or any other eligible candidate be declared elected.

33. The short ground on which the petitioner seeks to set aside the election of the first respondent is that she was a Christian by birth and continues to be a Christian and that by producing false Certificates as though she belonged to the Scheduled Caste, she contested and got elected. The necessary averments made by the petitioner in this connection are (i) that the first respondent was born on 9.6.1974 to Navakumar and Santhosapackkiam of Erumalainaickenpatti Village, Andipatti

Taluk, Theni District, both of whom were Christians by birth; (ii) that the first respondent was christened as Glory Chandra by her parents and she studied in CSI High School, Batlagundu, Nilakottai Taluk; (iii) that the first respondent's father Navakumar is working at Madurai Christian Mission Hospital; (iv) that as per school records, the first respondent is stated to belong to 'Indian Christian Pallan Community'; (v) that the first respondent filed a false declaration before the Returning Officer as though she studied in Government High School, Devathanampatti, though she never studied there; (vi) that the Community Certificate produced by the first respondent from the Rajapalayam Tahsildar, was procured on the basis of false documents and suppressing material facts; (vii) that the first respondent, born and brought up as a Christian was professing Christianity till date and the same is spoken to by a few members of the locality; and (viii) that the first respondent married one Soosaimanickam alias Murugan, who is also a Christian and who is a member of a Christian Institution by name 'Thuya Sahaya Annai Alayam'.

34. In her counter, the first respondent admitted that she was born to Navakumar and Santhosapackkiam and that she was a born Christian. But she contended that on 27.8.1994, she got converted to Hinduism through Arya Samaj, Madurai and married one Murugan on 23.1.1995. She also admitted that Murugan got converted from Christianity to Hinduism in 1975 itself and that both of them were accepted by the Pallan Community. The first respondent claimed in the counter that the declaration relating to the school in which she studied, was mistakenly given by her brother at the time of filing the nomination and that it was not noticed by her. Therefore she admits that she studied in CSI High School, Batlagundu.

35. The election petitioner examined himself as PW.1 and he filed the following documents as exhibits:

(i) The Certificate issued by CSI High School, Diocese of Madurai-Ramnad, dated 26.5.2006, as Ex.P.1.

(ii) The Certificate issued by the Headmaster, Government High School, Devathanampatti, dated 23.6.2006, as Ex.P.2.

(iii) The candidate's Identity Card issued to the petitioner by the Returning Officer, as Ex.P.3.

(iv) The Government Gazette dated 23.7.1975, containing details about the reconversion of the first respondent's husband to Hinduism, on 8.6.1975, as Ex.P.4.

(v) The Register of shareholders known in Tamil as 'Pangu Kudumba Pathivedu' maintained by St.Mary's Church known in Tamil as 'Thuya Sahaya Annai Alayam', Rajapalayam, as Ex.P.5.

(vi) The entry at Serial No. 8 in page No. 29 in Ex.P5, containing the name of the first respondent's husband as a member of the Church, as Ex.P6.

(vii) The Government letter dated 19.9.1990, issued on the basis of decision of the Supreme Court dated 25.1.1996 in SLP No. 27571 of 1995, clarifying that a child born to Christian parents will not be entitled to the benefits of reservation upon conversion to Hinduism, as Ex.P.7.

(viii) The copy of the notice issued by the Counsel for the petitioner to the Counsel for the first respondent, calling upon them to produce certain documents, as Ex.P.8.

(ix) The nomination paper filed by the first respondent, as Ex.P.9.

36. Two persons by name Mr. T.P. Paulsamy and Mr. Rajaiya, whose names were mentioned in paragraph No. 14 of the Election Petition, were examined by the petitioner as P.W.2 and P.W.3, to substantiate his contention that the first respondent and her family members are professing Christian Religion.

37. The Headquarters Deputy Tahsildar of Periyakulam Mr. M.K. Rajendran was examined as P.W.4 and two documents were marked through him as Exs.P.10 and P.11. They are (i) the original Birth Register of the year 1997 of Erumalainaickenpatti and (ii) the entry contained therein at S. No. 38 in page No. 7 relating to the birth of a girl child on 9.7.1997 to Soosaimanickam and Glory and whose religion was indicated in column Nos. 12 and 17 of the Register to be

Christianity.

38. The Headmistress of CSI High School, Batlagundu Mrs. D. Jayamanorama was examined as PW.5 and the relevant page of the Admission Register of the school, containing the entry relating to the particulars of the first respondent, was marked as Ex.P.12.

39. The Taluk Tahsildar, Rajapalayam Mr.S.Arumugham was examined as PW.6 and through him, the following documents were marked:

(i) The application made by the first respondent's husband to the Tahsildar, seeking the issue of a permanent Community Certificate for his wife (first respondent), as Ex.P.13.

(ii) The endorsements of the Village Administrative Officer, the Revenue Inspector and the Tahsildar on that application, as Exs.P.14, P.15 and P.16.

(iii) The entry at S.No.843 in the Register maintained for the issuance of Certificates, as Ex.P.17.

(iv) The entire Register containing Ex.P.17 entry, as Ex.P.18.

(v) The note order of the Tahsildar on the reverse of Ex.P.13 application, directing the issue of the Certificate, as Ex.P.19.

40. The Joint Sub Registrar II, Periyakulam Mr. K. Nallathambi was examined as PW.7 and through him the original Death Register for the year 1989 of Erumalainaickenpatti was marked as Ex.P.20.

41. Since the second respondent, who was also an unsuccessful candidate (and who secured the next highest number of votes to the returned candidate), supported the case of the election petitioner, he examined himself as RW.1, before the returned candidate went to the witness box. He filed the voters list of Andipatti Assembly Constituency for the year 1999, as Ex.R.1 and the entry therein at S.No.865, containing the name of the first respondent as Glory Chandra, as Ex.R.2.

42. The General Manager of Bharat Sanchar Nigam Limited, Virudhunagar Telecom District Mr. K.V. Balasubramaniam was examined as RW.2 and through him, the following documents were marked:

(i) The original application dated 27.4.1998 for telephone connection made by A. Susaimanickam (first respondent's husband), in respect of the telephone connection No. 45386, as Ex.R.3.

(ii) The Virudhunagar Telecom District Telephone Directory, as Ex.R.4 and the entry at page No. 36 relating to A. Susaimanickam, as Ex.R.5.

(iii) The application dated 5.11.1999 for telephone connection No. 224721 made by A.Murugan at a different address, showing the name of Glory Chandra as his nominee in the Appendix Form, as Ex.R.6.

43. The returned candidate (first respondent) examined herself as RW.3. She marked the following exhibits:

(i) The original Certificate issued to her by the Election Officer for Ward No. 3, Rajapalayam Reserved Constituency, as Ex.R.7.

(ii) The appointment order dated 10.11.2005 as Trustee of Mayuranatha Swamy Temple, as Ex.R.8.

(iii) The copy of the letter dated 23.1.2006 sent to her regarding the election of the Managing Trustees, as Ex.R.9.

(iv) Notice dated 1.2.2006 of Deputy Commissioner of H.R. & C.E Department, convening the Meeting of Trustees, as Ex.R.10.

(v) Her Notarised Community Certificate, as Ex.R.11.

(vi) Original Mortgage Deed executed by her maternal grandfather Rajamanickam wherein the Community is mentioned as 'Devendra Kulam', as Ex.R.12.

(vii) Conversion Certificate issued to her by Arya Samaj, Madurai as Ex.R.13, subject to objection by the petitioner.

(viii) Receipt for Rs. 250/- to Devendra Kula Velalar Samoogam on the occasion of her marriage and the certificate (series 2 Nos.), as Ex.R.14.

(ix) Birth Certificate of Sudandiradass (marked subject to objection), as Ex.R.15.

(x) Original Voter Identity Card issued to her, as Ex.R.16.

(xi) Original Voter Identity Card issued to her, after change of residence, as Ex.R.17.

(xii) Copy of Sale Deed, dated 14.2.2001, as Ex.R.18.

(xiii) Her Family Ration Card Copy as Ex.R.19.

(xiv) Arulmighu Muthalamman Koil Donation Receipt No. 63, dated 27.9.2004, issued to her, as Ex.R.20.

(xv) Mallaiswaran Temple Donation Receipt No. 346, dated 23.6.2003, issued to her as Ex.R.21.

(xvi) The School Certificate of Santhosapackkiam, mentioning her Father as M.S. Rajamanickam and that entry as Ex.R.22.

44. A native of Erumalainaickenpatti, by name Sengaiah, was examined on behalf of the first respondent as RW.4, to speak about the family background of the first respondent. Through him, two documents were sought to be marked, but they have been taken subject to objections as Exs.R.23 and R.24. They are (i) the list of members of Kaliyamman Temple and (ii) the list of members of Palichiamman Temple.

45. The first respondent also examined one Rasu of Ayyankollakondan Village as RW.5, one Mr. R. Govindan of the same Village as RW.6 and one Mr. S. Paulraj of Erumalainaickenpatti Village as RW.7 to speak about the family background of the first respondent's husband, their marriage etc., and the customs followed by the family in their family functions. They were also examined for the purpose of showing that the first respondent was professing Hindu Religion and worshipping Hindu Gods and following Hindu Customary Rites.

46. A photographer, by name P. Magesh, was examined as RW.8, for the purpose of marking the photographs taken at the time of the first respondent assuming Office as Trustee of Mayuranathaswamy Temple, as Exs.R25 to R27. Another Trustee of the Mayuranathaswamy Temple Mr. K. Paramasivam was examined as RW.9, for corroborating the evidence of RW.8.

47. The uncle of the first respondent Mr. R. Surulimuthu was examined as RW.10 and he filed the following exhibits:

(i) Original Transfer Certificate, mentioning his Community as Hindu Pallan, as Ex.R.28.

(ii) Original Certificate of Teacher Training School, mentioning his Community as Hindu Pallan, as Ex.R.29.

(iii) The School Certificate of Ranjitham, as Ex.R.30.

(iv) The School Certificate of Santhosapackkiam, as Ex.R.31.

(v) The legal heir Certificate issued to him, as Ex.R.32.

48. Since the petitioner has come to Court seeking to set aside the election of the first respondent, the burden of proof is cast heavily on him in the first instance. As seen from his election petition, the only ground on which the petitioner challenges the election of the first respondent is that the first respondent was born to Christian parents and brought up by them as a Christian and that therefore she is not qualified to contest from a reserved constituency. Therefore we have to see if the petitioner has proved this averment.

49. In her counter to the election petition, the first respondent has neither admitted forthright or denied the fact that her father Navakumar was a Christian. But in so far as her mother is concerned, the first respondent took a stand in paragraph No. 7 of her counter that her mother has been a Hindu throughout and that the marriage between her parents took place in Erumalainaickenpatti as per the custom prevailing in Hindu Pallan Community. If the first respondent had stopped at that, the entire burden of proving that she was born to Christian parents and

was brought up as a Christian would have rested solely and completely upon the petitioner. But in the same paragraph No. 7 of her counter, the first respondent admitted that she got converted from Christianity to Hinduism through Arya Samaj, Madurai on 27.8.1994. If the first respondent was a Hindu by birth and continued to profess the Hindu faith throughout, there was no need for such conversion. Therefore, by the very admission of the first respondent, the fact that at least till 27.8.1994 she was a Christian stands proved. It is trite to point out that admitted facts are deemed to stand established.

50. Since the averment that the first respondent was a Christian from her birth (in 1974) at least upto a particular stage in her life, (say 1994) stands proved by her own admission, the burden to prove (i) the factum of conversion and (ii) the factum of professing of the Hindu faith from the date of conversion, stood shifted to the first respondent, like a pendulum. The Supreme Court, under identical circumstances, in the decision in *Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju and Ors.* : AIR 2006 SC543 , approved on principle that the initial burden was on the election petitioner to establish his plea that the returned candidate did not belong to a scheduled tribe and once it is discharged, the burden shifted to the returned candidate to establish that he belonged to scheduled tribe.

51. But before we proceed further on the aspect of burden of proof, one argument advanced on behalf of the first respondent needs to be addressed. The first respondent contended that even according to the petitioner, she belonged to the Pallan Community. It is a caste included in entry 49, Part XVI of the Constitution (Scheduled Castes) Order, 1950. Therefore, even as per the case of the petitioner, the first respondent belongs to Pallan caste which is notified as a Scheduled Caste under the Presidential Order. But the petitioner attempts to bring the case of the first respondent within the exception under Paragraph 3 of the Order, which reads as follows:

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

52. Placing reliance upon the language employed in the above deeming provision, the first respondent contends that it is not enough for the election petitioner to merely prove that the first respondent was born as a Christian, but that the petitioner should actually prove that the first respondent professes a religion other than the Hindu, the Sikh or the Buddhist religion. In other words, the emphasis in paragraph No. 3 of the Presidential Order is not on the birth of a person in any particular religion, but on the act of professing a faith different from the three enlisted therein.

53. But the above contention cannot be countenanced, since it will have a disastrous consequence. The acceptance of the above contention would result in the time tested requirements of (i) reconversion to Hinduism and (ii) acceptance by the members of the Caste, being dispensed with, in total. To put it differently, if this argument is accepted, a person born and brought up as a Christian, will be able to contend that even while continuing as a Christian or Muslim on record, he was only professing Hinduism by practice and that therefore he could be extended the benefits of reservation, despite continuing on paper in the other religious fold. Therefore such an argument cannot be accepted.

54. A person may belong to a religious sect on record, but may profess and practice any other faith or religion. He may even be a person with no faith. But in order to be able to claim the benefits of reservation, he must certainly establish at least two things viz., (i) that the Caste to which he belongs is notified in the Presidential Order and (ii) that he is not professing a religion different from the Hindu, the Sikh or the Buddhist. If a person is shown by records, to belong to a religion different from the Hindu, the Sikh or the Buddhist, a presumption arises that he professes and practises such religion. This presumption is rebuttable. It is needless to point out that the person who is obliged to rebut the presumption, is the person against whom the presumption is raised.

55. In this case, the admission of the first respondent that she converted from Christianity to Hinduism in 1994, establishes the fact that she was a Christian at least till then. Therefore a presumption arises that she was professing Christianity. This presumption satisfies paragraph-3 of the Presidential Order extracted above.

But it is open to the first respondent to rebut the presumption, by leading evidence to establish whatever she pleaded in the counter viz., (i) that there was a conversion in 1994 and (ii) that she started professing Hinduism thereafter. It is at this point and on account of this factor that the burden of proof, in this case, shifted to the shoulders of the first respondent to establish that she was professing Hinduism.

56. This issue can also be viewed from another angle. A person making a positive assertion that his opponent is practising a particular religious faith, is obliged to prove it, since the opponent denying it cannot prove the negative. In this case, the election petitioner came to Court with a positive assertion that the first respondent was practising Christianity. If the first respondent had not accepted the factum of conversion to Hinduism, the burden would have been on the petitioner to prove the positive. Once the first respondent has pleaded conversion to Hinduism, it becomes a positive assertion that she is professing Hinduism, while the allegation of the petitioner becomes the negative. Therefore, the burden shifted on the first respondent to prove that she was professing Hinduism.

57. While we are on the issue of burden of proof, we must also bear in mind, the march of law. The cases that have come up so far before Courts could be categorised as follows:

(i) Where the litigant before the Court was born a Hindu, got converted to Christianity and later reconverted to Hinduism.

The decisions in *S. Rajagopal v. C.M. Arumugam and Ors.* : [1969]1SCR254 and *C.M. Arumugam v. S. Rajagopal and Ors.* : [1976]3SCR82 fall under this category.

(ii) Where the parents of the litigant were born as Hindus, got converted to Christianity, gave birth to the litigant while continuing as Christians and the litigant got converted to Hinduism;

The following decisions fall under this category:

a) *The Principal, Guntur Medical College, Guntur and Ors. v. Y. Mohan Rao* : [1976]3SCR1046 ,

- b) Kailash Sonkar v. Smt. Maya Devi : [1984]2SCR176),
- c) S. Anbalagan v. B. Devarajan and Ors. : [1984]1SCR973 ,
- d) S. Swvigaradoss v. Zonal Manager F.C.I. : [1996]1SCR995 ,
- e) Lilly Kutty v. Scrutiny Committee, S.C. & S.T. and Ors. : AIR 2005 SC4313 ,
- f) G. Sarath Raj v. Government of Tamilnadu Rep. by Its Principal Secretary, Department of Home, Chennai and Ors. : (2007)5MLJ1409

(iii) Where the parents of the litigant were Christians (and their conversion from Hinduism to Christianity at any time during their life time is not borne out by the records) and the litigant who was born as a Christian, got converted to Hinduism.

58. The case of the first respondent does not fall under the first category, since she was not born as a Hindu and got converted and reconverted. The case of the first respondent would not also fall under the second category, since there is no pleading that her parents were Hindus who got converted to Christianity. The first respondent maintained in her counter that her mother was a Hindu throughout, though the first respondent did not commit herself on the status of her father. Therefore the case of the first respondent would fall only under the third category. In the past more than five decades, the Supreme Court has dealt with a number of cases that would fall under categories 1 and 2. But the cases decided under category 3 above mentioned, appear to be a rarity. Though the Courts have not postulated any particular method for reconversion to Hinduism, they have not gone to the extent of dispensing with such a requirement of reconversion in total. Therefore the question as to whether the first respondent discharged the burden cast upon her and whether she was able to rebut the presumption, on facts, should be looked into, in the above background of issues.

59. The first respondent in her counter statement filed in the election petition in paragraph No. 7 has stated that she converted to Hinduism in 1994 through the Arya Samaj, Madurai and the certificate, dated 27.8.1994, issued by Arya Samaj, Madurai is filed along with the counter. The first respondent did not file the original certificate but only filed a xerox copy of the conversion certificate in page 2 of the

typed set of papers dated 21.1.2007 filed with counter. The first respondent did not produce the original of the said xerox copy subsequently also. In the trial, in her examination in chief as RW.3, the first respondent produced a Duplicate conversion certificate and marking of it was objected to by the learned Counsel for the election petitioner on the ground that it is not original and the said document was marked subject to objection as Ex.R.13. In her testimony, RW.3-Chandra has stated that the original conversion certificate was issued in the evening on 27.8.1994 and it was received by her uncle Santhakumar from Arya Samaj, Madurai and it was in his custody and she did not obtain the same and after the filing of the election petition, she asked her uncle Santhakumar to hand over the certificate to her and he replied that he lost the original certificate and she requested him to obtain a Duplicate copy of the certificate and accordingly Santhakumar obtained Ex.R.13-Duplicate copy of conversion certificate. RW.10-Surulimuthu, in his cross-examination, has stated that the original of Ex.R.13-certificate is with Santhakumar. At the time of filing of the counter to the election petition, the original conversion certificate was available and a xerox copy was taken and filed in the typed set. At the time of trial, that original has not been filed and the person said to be in possession of the same viz. Santhakumar was also not examined by the first respondent to substantiate the loss of original and obtaining a duplicate of the same. Further, the signature of the first respondent found in Ex.R13-certificate is 'M. Chandra'. Even as per the testimony of RW.3-Chandra, she used to sign as 'N. Chandra' before marriage and as 'M. Chandra' after marriage. Ex.R13-conversion certificate had come into existence before her marriage. The explanation now sought to be given by the first respondent is that the duplicate was obtained now only. But, it has to be borne in mind that the duplicate cannot be different from that of the original and it is not a public document. The original records have also not been summoned from Arya Samaj, Madurai and no steps have been taken to summon the responsible person from Arya Samaj to prove that first respondent underwent conversion.

60. In the counter statement, the first respondent has not stated about the presence of her close relatives along with her at the time of her conversion before Arya Samaj, Madurai and she has also not mentioned about any rituals performed at that time. In her testimony, as RW.3, she has stated that at the time of the

conversion ceremony, she gave a typed requisition in a non-judicial stamp paper to the value of Rs. 20/- to Arya Samaj, Madurai and her uncle Santhakumar, her mother Santhosapackkiam and her maternal uncle RW.10 Surulimuthu were with her and after taking head-bath in water tank in Arya Samaj, Madurai, she circumambulated the Kalasam (Kumbam) nearby three times and a Brahmin priest chanted mantras and offered sacred ash, kumkum and flowers and she received the same and he declared that she shall be known thereafter as Chandra. It is relevant to note that the presence of Santhakumar and Santhosapackkiam at the time of ceremony was not spoken to by RW.10-Surulimuthu and he has also not stated anything about 'Suddhi Ceremony', namely, rituals in his chief examination. After the extensive cross-examination of RW.3-Chandra pertaining to the conversion ceremony and issuance of Ex.R13-certificate, the first respondent could have summoned her mother Santhosapackkiam and uncle Santhakumar and other relevant persons to substantiate her plea, especially in the absence of original conversion certificate but still, she did not take any step in this regard to remove the shadow of doubt. It is true that clinching evidence on the formal ceremony of conversion may not be necessary in view of rulings of the Apex Court *Perumal Nadar (Dead) By Lrs. v. Ponnuswami* : [1971]1SCR49 but it has to be seen as to whether the claim made by the first respondent that she has been professing Hinduism is established or not.

61. The first respondent in her counter statement has stated that her husband got converted to Hinduism in the year 1975 itself and the marriage between her and her husband Murugan took place on 23.1.1995 in her husband's house as per the custom and practice in the Hindu Pallan Community in the presence of Village Nattamai and he who took the 'Thali' and gave it to Murugan who tied it around her neck and a sum of Rs. 250/- was given to the community known as 'Devendrakula Velalar Samoogam'. In her testimony, as RW.3, she has stated that at the time of her marriage, her husband was a Hindu and he had effected a change in his name in the Gazette and her marriage was held by putting a 'pandhal' in front of her husband's house at Ayyankollakondan Village and pooja was performed in the nearby Sundaranatchiamman temple by placing the wedding clothes before the deity and Nattamai, Secretary and Village Headman gave the wedding clothes to her and after wearing the same, they sat on the stage and her husband Murugan

tied Mangalsutra on her neck as per Hindu custom and a sum of Rs. 250/- was paid by her husband to 'Devendrakula Velalar Samoogam' on account of marriage, for which, a receipt and marriage certificate in Ex.R14 (series) were issued by the Samoogam. In her cross-examination, RW.3-Chandra has stated that her wedding invitation cards were printed and distributed in the village, but she has not produced the same in the trial of the case. This is an important evidence which ought to have been produced to clear the doubts relating to the custom followed in the said marriage and the omission to produce the same creates a dent in the case pleaded by the first respondent. Further, RW.3-Chandra has stated that no photographs were taken at the time of her marriage. It was pointed out by the Election Petitioner that the family of Murugan has been taking photographs during their marriages. RW.3-Chandra in her cross-examination has stated that her husband's younger brother Selvaraj's marriage was held in a Church at Kollakondan and the photographs shown to her in the Witness Box were taken in that marriage. In this context, it is relevant to point out that the second daughter of RW.10-Surulimuthu is married to Sudhakar Gnanaraj, who is the younger brother of the first respondent and RW.10-Surulimuthu has stated that photographs were taken in that marriage. Therefore, the testimony of the first respondent that no photographs were taken during her marriage, is hard to believe.

62. Ex.R14 (series) comprises of the marriage certificate issued by 'Devendrakula Velalar Samoogam' and the receipt for payment of a sum of Rs. 250/- to the Samoogam by the husband of the first respondent at the time of their marriage. The marriage certificate referred above is undated. RW.6-Govindan claims to have signed the marriage certificate as Nattamai and RW.5-Rasu is also one of the signatories to the certificate. RW.5-Rasu has stated that he is the Poojari of Sundaranatchiamman temple belonging to Pallan Community and on the day of marriage, both Murugan and the first respondent came to the temple with a plate carrying garlands and he did pooja to the deity and both of them went to marriage pandhal and marriage was performed as per Community tradition. RW.5-Rasu has further stated that at the time of marriage of the first respondent, Mr.Karuppiah was the Village Nattamai and when the marriage certificate in Ex.R14 (series) was given, RW.6-Govindan was the Village Nattamai. The said Karuppiah has not been examined. Though RW.6-Govindan has stated that he attended the marriage

of the first respondent with Murugan, the first respondent as RW.3 has specifically stated that RW.6-Govindan was not present at her marriage. Further, as per the testimony of RW.6-Govindan, there is no register maintained by them recording the marriages of the members of their Community and there is nothing in writing to show that Murugan is a member of 'Devendrakula Velalar Samoogam' and he does not know about the receipt in Ex.R14 (series). RW.5-Rasu has not established his claim to be Poojari of Sundaranatchiamman temple by producing any documentary evidence. In fact, RW.10-Surulimuthu himself has not mentioned about the custom followed in the marriage of the first respondent as spoken to by RW.5-Rasu in his testimony. Even as per the evidence of RW.5-Rasu, prior to 1998, Surutaiya was performing pooja in Sundaranatchiamman temple. The fact remains that the marriage certificate has been issued by a person, who has not attended the marriage of the first respondent and RW.5-Rasu has not established convincingly that he was the poojari of Sundaranatchiamman temple at the time of marriage of first respondent. Hence there is no acceptable evidence to show that the marriage of the first respondent with Murugan was performed as per Hindu rites.

63. It is contended by the Election Petitioner that there is no conversion of religion on the part of the husband of the first respondent and as per Ex.P4-Notification, name change alone was effected in the Gazette and there is evidence to the effect that he continued to follow Christianity and the first respondent also continued to profess the Christian religion.

64. Exs.P10 and P11 are the entries in original Birth Register of 1997 pertaining to the births in Erumalainaickenpatti Village and they refer to the birth of a female child to the first respondent, whose then name is referred as Glory Chandra and whose father's name is referred as Soosaimanickam and their religion referred as Christianity. The Birth Register is a public document and PW.4-Mr. M.K. Rajendran, Headquarters Deputy Tahsildar of Periyakulam has testified about the entries. The Supreme Court in a recent decision in *Desh Raj v. Bodh Raj* : AIR 2008 SC632 held that Section 35 of the Evidence Act provides that an entry in any public or other official book or register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any

other person in performance of a duty specifically enjoined by law of the country in which such book or register is kept, is itself a relevant fact. Though the first respondent has chosen to produce and mark the Birth Certificate of her son subsequently born in the year 2000 as Ex.R.15, she did not produce the Birth Certificate of her daughter to disprove the above entries. In the absence of contra evidence, the above entries have to be accepted and it shows that the first respondent continued to be a Christian even in the year 1997.

65. Ex.R.1 is the Voters list of Andipatti Assembly Constituency for the year 1999 and Ex.R.2 is the relevant entry containing the name of the first respondent herein as Glory Chandra. The husband of the first respondent has given a publication in Ex.P4-Tamil Nadu Government Gazette dated 23.7.1975 stating that he was born on 12.12.1957 and he has reconverted to Hinduism with the name A.Murugan on 8.7.1975. It is relevant to note that he had not completed the age of 18 years either on the date of conversion or on the date of Gazette Notification and hence not competent to make a Declaration. He has applied for a telephone connection in Dhalavaipuram Telephone Exchange in Ex.R3 application dated 27.4.1998, in which, he has stated his name as A. Susaimanickam and mentioned his brother A. Selvaraj as nominee and they have been described as sons of Mr. Arulappan. Ex.R6 is the application given by the husband of the first respondent seeking telephone connection in Rajapalayam exchange and he has mentioned his name as A. Murugan and the application was registered on 26.11.1999 and in the nomination form, the name of the nominee mentioned by him is Smt. Glory Chandra, his wife. The General Manager of Virudhunagar Telecom District RW.2-Balasubramaniam has testified to the same.

66. Ex.P5 is the original Book issued on 22.5.2005 by a Church 'Thuya Sahaya Annai Alayam' in Rajapalayam and the name of the first respondent's husband Susaimanickam has been mentioned in the alphabetically arranged names portion of the said book as a 'pangu member' of the said Thiruchabai (congregation). Though the first respondent has mentioned in her testimony as RW.3 that her husband gave donation to the Church and his name has been wrongly included as a member, this fact has not been proved by examining the person who published the book and the publication of the Church book is not seriously disputed and the

line of cross-examination of the election petitioner as PW.1, was only about the manner of production of the document. The first respondent has not chosen to examine her husband to disprove the entries in Ex.P5 as well as Exs.R3 to R6.

67. Ex.R23 is the list of members of Kalamman temple and Ex.R24 is the list of members of Palichiamman temple and marking of both the documents were objected to on the ground that they are neither primary evidence nor secondary evidence and not documents duly authenticated or verified from the Original Register and hence not admissible under Sections 61 and 64 of the Indian Evidence Act and they were marked subject to objection. From the evidence of RW.4-Sengaiah, it is seen that a manuscript was given to the husband of the first respondent and it was not returned at the time of affixing the signatures of RW.4-Sengaiah and RW.7-S.Paulraj in the above documents. The list of names mentioned in the above documents also does not contain any details like age and address of members and the lists do not bear any date. There are no averments in the counter statement relating to these temples and maintenance of the list of names and the office bearers of the temples. For the above reason, no reliance can be placed on these documents.

68. Exs.R.20 and R.21 are receipts issued to the first respondent for having paid donations for putting up construction of the temples mentioned therein. These documents would not advance the case of the first respondent, since it is common that donations are made by persons of all faith in favour of temples. RWs.4 to 7 have stated about the worshipping of Hindu Gods by the first respondent. The worship cannot be viewed in isolation and there must be acceptable evidence to conclude about professing Hindu faith. In the same way, the participation of the first respondent in puberty and marriage functions of Hindus as spoken to by Rws.4 and 6 do not help her case. Admittedly, the first respondent is in public life from the year 2001 and she was a Party functionary as well as a Councilor and in such capacities, it is but natural for her to participate in all the functions.

69. The first respondent was appointed as Trustee on 10.11.2005 by the Government in Arulmighu Mayuranathaswamy Temple, Rajapalayam as evident from Exs.R8 to R10. According to the learned Counsel for the first respondent, the

said appointment was accepted in true spirit by the first respondent, who is found worshipping reverentially in Exs.R25 to R27-photographs taken by RW.8-Magesh. The first respondent in her cross-examination as RW.3 has stated that no application was made for appointment of Trustee and at the time of her appointment as Trustee, the Party to which she belong was running the Government. After assuming office of the Trustee, she along with RW.9-Paramasivam and others had worshipped the deity, which was photographed. That has happened in connection with her office and it would not automatically establish her professing the religion. It is relevant to note that RW.9-the other Trustee has stated that neither he nor his Party members are aware of the name of the first respondent as Glory Chandra or about her conversion of religion.

70. Ex.R11 is the Community Certificate of the first respondent issued by the Tahsildar, Rajapalayam. Since it is issued by a competent Authority and continues to be in force, it is contended by the first respondent that her community status cannot be questioned. But, the Supreme Court in the decision in *Sobha Hymavathi Devi v. Setti Gangadhara Swamy and Ors.* : AIR 2005 SC800 held as follows:

11. What remains is the argument based on the certificates allegedly issued under The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificate Act, 1993. The High Court has not accepted the certificates as binding for the reason that the evidence showed that the certificates were issued based on the influence exercised by the appellant as a member of the Legislative Assembly, one after another, immediately on an application being made and without any due or proper enquiry. We are impressed by the reasons given by the High Court for not acting on these certificates. That apart, a reference to Section 3 of the Act would indicate that a certificate thereunder, insofar as it relates to elections, is confined in its validity to elections to local authorities and co-operative institutions. It does not embrace an election to the Legislative Assembly or to the Parliament. Therefore, in any view of the matter, it cannot be said that the High Court, exercising jurisdiction under The Representation of the People Act in an Election Petition is precluded from going into the question of status of a candidate or proceeding to make an independent inquiry into that question in spite of the production of a certificate under the Act. At

best, such a certificate could be used in evidence and its evidentiary value will have to be assessed in the light of the other evidence let in, in an Election Petition. Therefore, nothing turns on the factum of a certificate being issued by the concerned authority under the Act of 1993. We are also satisfied as the High Court was satisfied, that no proper inquiry preceded the issuance of such a certificate and such a certificate was issued merely on the say so of the appellant. We have, therefore, no hesitation in overruling this argument raised on behalf of the appellant.

71. The case of the Election Petitioner is that the said certificate has been obtained in a fraudulent manner by the husband of the first respondent without disclosing that the first respondent was born to Christian parents and the present Tahsildar of Rajapalayam has been examined as P.W.6. Ex.P.13 is the application seeking for issuance of Community Certificate to the first respondent and the applicant is her husband Murugan. The application has not been signed by the first respondent and the reason stated therein for making such an application is for the purpose of obtaining a sewing machine under the Free scheme of Adi Dravida Welfare. The first respondent did not give any statement or affidavit and the present witnesses had not given any statement at that time. No document was enclosed for proof of community. Exs.P14 and P15 are the endorsements made on the application by the Village Administrative Officer and the Revenue Inspector respectively recommending the issuance of the Community Certificate. Ex.P16 is the written endorsement dated 4.4.1997 made by the subordinate of the Tahsildar asking for community proof, but the Community Certificate under Ex.P19 has been issued on the same day viz. 4.4.1997 and in the English version of the certificate, the first respondent is described as daughter of Murugan. In this context, it is to be noted that the said Community Certificate has not been issued on the basis of conversion of Hinduism as claimed by the first respondent. On the other hand, the husband of the first respondent, who was admittedly a Ward Council Member at that time, applied on behalf of his wife, namely, the first respondent, seeking issuance of Community Certificate without producing any community proof and managed to obtain the said certificate and it is irregularly issued.

72. A contention was raised on behalf of the first respondent that the Election Petitioner has not raised objection when the first respondent contested from Ward No. 3 Seat to the Panchayat Union Council, which was reserved for Scheduled Caste and when the first respondent was appointed as a Trustee to Arulmighu Mayuranathaswamy Temple, Rajapalayam and during the scrutiny of nominations in the present election and in view of the majority verdict by the electorate in her favour, her community has accepted her. The Election Petitioner did not contest the election in Ward No. 3 when the first respondent contested the said election and the appointment of first respondent as Trustee has been made without application and as already seen, even RW.9-Paramasivam, who happened to be the member of the same Party to which the first respondent belong, has testified that neither he nor his Party members are aware of the conversion of religion by the first respondent and even RWs.6 and 7 have stated that they are not aware of the previous name of the first respondent as Glory Chandra and about her conversion and father's religion etc. In this context, the reply of the first respondent in her testimony as RW.3 to a question put to her in cross-examination pertaining to conversion is relevant and she has replied that there was no necessity to tell the electorates of the Ward in which she contested about her conversion as she was brought up as a Hindu. As already seen, the first respondent has concealed the material facts like her father's religion, her prior name as Glory Chandra and her alleged conversion while obtaining the Community Certificate and also contesting the Panchayat Council election. In this context, it is relevant to point out that the declaration given by the first respondent in Ex.P9-Nomination that she had passed seventh standard from Government High School, Devathanampatti is false, as evident from Ex.P2-Certificate dated 23.6.2006 issued by that School and the first respondent attempted to cover up this by claiming that it was a mistake committed by her brother Mr.Sudhakar Gnanaraj who prepared the nomination papers. In a democratic country like ours, political Parties have their own role to play in the election and merely winning the Election, cannot be construed that the first respondent was accepted by the entire Scheduled Caste community. Moreover there is no estoppel or acquiescence for challenging the election.

73. In the light of the discussions as above, I hold on Issue Nos. 1 and 2 that the first respondent suppressed the fact that as per school records she was a

Christian and made a false declaration relating to her community status to the Authorities.

74. Further, I hold on Issue No. 3 that the first respondent has not produced any acceptable evidence to show that she got converted to Hinduism through Arya Samaj, Madurai and was accepted by the Hindu Pallan Community. I also hold that the first respondent has not established that she has been professing Hinduism as claimed by her. Issue Nos. 1 to 3 are answered accordingly.

Issue No. 4.

75. In view of the findings on Issue Nos. 1 to 3, the election petitioner is entitled to a declaration that the election of the first respondent herein is void on the ground that she was not qualified to contest the Election in Rajapalayam Reserved Constituency and the Issue No. 4 is answered accordingly.

Issue Nos. 5 and 6.

76. In addition to the prayer for declaration that the election of the first respondent is null and void, the election petitioner has also prayed for a further declaration to declare him or other eligible candidate as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 209, Rajapalayam (SC) Assembly Constituency (Tamil Nadu) in the election held on 8.5.2006. There were thirteen candidates in fray. The returned candidate secured the highest number of votes, namely, 58,320 and the second respondent secured 57,827 votes. The election petitioner did not even secure minimum number of votes and therefore declaring him as elected does not arise. The respondents 3 to 12 remained exparte. The second respondent in his counter has prayed for a declaration that he be declared as the returned candidate of No. 209, Rajapalayam (SC) Assembly Constituency since he secured the next highest number of votes. Therefore, the question is as to whether a person who secured the next highest number of votes can be declared as duly elected. In this context, the decision of the Apex Court in *Prakash Khandre v. Dr. Vijay Kumar Khandre and Ors.* : [2002]3SCR994 is to be borne in mind and Their Lordships of the Supreme Court held in paragraphs 14 and 24 as follows:

14. However, in an election where the elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than the other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected.

24. In view of the aforesaid settled legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of the elected candidate (appellant) are thrown away was totally erroneous and cannot be justified. As held by the Constitution Bench in *Konappa Rudrappa Nadgouda v. Vishwanath Reddy* : [1969]2SCR90 that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as 'thrown away' only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern. Therefore, order passed by the High Court declaring the election petitioner Dr. Vijay Kumar Khandre as elected requires to be set aside.

77. Section 101(a) of The [Representation of the People Act, 1951](#) enables the Court to declare the election petitioner or any other person as duly elected, if the Court is of the opinion that he had received a 'majority of the valid votes.' The Rule is carefully worded inasmuch as it does not use the phrase 'candidate who secured the next highest number of votes.' In the present case, there were 13 candidates and it is impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was not qualified to be chosen to fill the seat. The very language of the Section does not permit such a guess work. Hence the election petitioner is not entitled to a declaration in terms of Section 101 and Issue Nos. 5 and 6 are answered accordingly.

78. In the result, the Election Petition is partly allowed and the election of the first respondent herein/returned candidate from No. 209, Rajapalayam (SC) Assembly Constituency (Tamil Nadu) in the Election held on 8.5.2006 is declared void and the first respondent shall pay costs of Rs. 5,000/- (Rupees five thousand only) to the petitioner.