

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

MONDAY, THE 20TH DAY OF MARCH, 2023 / 29TH PHALGUNA, 1944

EL.PET. NO. 11 OF 2021

PETITIONER:

D.KUMAR,
AGED 63 YEARS
S/O. DURAIRAJ, TANDUM HOUSE, OLD MUNNAR, IDUKKI
DISTRICT, PIN -685612.

BY ADVS.
M.NARENDRA KUMAR
M.J.SAJITHA

RESPONDENT:

1 A.RAJA
S/O. ANTHONY, AGED 37 YEARS, 5/386, KUNDALA ESTATE, S.P.
PURAM-685617, IDUKKI DISTRICT.

BY SENIOR ADV.SRI.T.KRISHNANUNNI
ADV.SRI.RAGHURAJ
ADV.SRI.DEEPULAL MOHAN, SC, ELECTION COMMISSION OF INDIA
ADV.SRI.K.S.BHARATHAN (ADVOCATE COMMISSIONER)

THIS ELECTION PETITION HAVING COME UP FOR HEARING ON 20/03/2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

Pertaining to the election to the Legislative Constituency - Devikulam 088 in Idukki District in the year 2021 (6/4/2021), the petitioner came up challenging the election of returned candidate, the respondent, on the reason that the said constituency is reserved for Scheduled Caste among Hindus and the returned candidate is not a person belonging to Scheduled Caste among Hindus within the State of Kerala, hence violated the provision - Section 5 of the Representation of Peoples Act, 1951. The returned candidate Sri.A.Raja, S/o Antony is a Christian and not a member of Scheduled Caste. The objection raised by the petitioner before the Returning Officer against the acceptance of nomination was rejected without assigning any valid reason. After the election, the returned candidate was declared elected by a margin of 7848 votes.

2. It is alleged that the respondent is not a member of 'Hindu Parayan' within the State of Kerala. The

grandparents of respondent on the paternal side are Pushpam and Lakshmanan, who were residents of Thirunelveli, Tamil Nadu, who migrated to Kerala in 1951 (the present district Idukki). It is further submitted that Hindu Parayan is a scheduled caste in relation to the State of Tamil Nadu in Part XVI of the Schedule to the Constitution (Schedule Castes) Order, 1950. Hence, they cannot claim to be a member of Scheduled Caste Hindu Parayan in Part VIII of Order 1950 in relation to State of Kerala. The descendants of Pushpam and Lakshmanan also cannot claim to be a member of Hindu Parayan in Part VIII of Schedule to the Order, 1950. The respondent is the son of Antony and Esther, born on 17/10/1984. Antony and Esther are Christians baptised by the CSI Church in 1992 in Kundala Estate by Pastor Ebanazer Mani. Esther died on 13/10/2016 and was buried at CSI Church in Kundala estate. The very same Pastor Ebanazer Mani baptized the respondent herein and is a member of CSI Church, Kundala Division. The respondent married Shiny Priya in accordance with Christian religious rites in the presence of Ebanazer Mani. She is also a

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member of CSI Church. The caste certificate filed along with the nomination issued by Tahsildar, Devikulam depicting the respondent as Hindu Parayan is not correct. Hence the election of the respondent is liable to be declared void under Section 100(1)(a) and 100(1)(d)(i) of the Representation of Peoples Act, 1951.

3. The returned candidate, the respondent, in turn submitted his written statement raising the following contentions:

The election petition was filed beyond the period of limitation prescribed under the provisions of the Representation of Peoples Act, 1951. It is not properly verified. The respondent belonged to Hindu Parayan Community in relation to the State of Kerala. Annexure A1 is the caste certificate issued by Tahsildar, Devikulam. The Returning Officer rightly rejected the objection to the acceptance of nomination paper. The paternal grandparents of this respondent started their residence in the erstwhile Travancore prior to 1950. They were employees of Kundala estate. The contentions raised by the petitioner are

mutually destructive and conflicting regarding the alleged year on which the respondent predecessor-in-interest migrated to Kerala. As the grandparents of the respondent had been issueless for a long period, on the advise of some well-wishers, they offered prayer in a nearby church. Thereafter they were blessed with a child to whom the name Antony, a Christian name, was given. The name of mother is not Esther, but Easwari. The parents of the respondent were Hindus and they never converted to Christianity. The allegation of baptism is incorrect, hence disputed. The wife of the respondent, Shyni Priya, is a Hindu and not a member of CSI Church. Their marriage was solemnized at the house of the respondent. Ebenezer Mani was an invitee and he attended the marriage. It is true that some of the family members of Shyni Priya converted to Christianity. Hence pressed for dismissal of the application.

4. The two preliminary issues as to (i) whether the election petition is liable to be dismissed at the threshold under Order VII Rule 11 C.P.C. due to want of cause of action and (ii) whether it is barred by limitation

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were considered and rejected by this Court by order dated 10/03/2022.

5. The other issues for determination settled by this Court are :

(I) Whether the returned candidate is a person belonging to Scheduled Caste among Hindus in the State of Kerala ?

(II) Whether the acceptance of nomination of returned candidate is proper ?

(III) Whether the election of returned candidate is liable to be set aside ?

(IV) Reliefs and cost."

6. On the side of the petitioner, PW1 to PW9 were examined and Exts.P1 to P8 were marked and on the side of the respondent, RW1 and RW2 were examined and Exts.R1 to R25 were marked. The court exhibits consists of Exts.X1 to X5 and an additional document was marked as Ext.X6.

Issue No.1 to 3

7. It is submitted by the learned counsel for the

petitioner that issue No.1 consists of two separate questions to be adjudicated separately as to (i)whether the respondent is entitled to the benefit conferred on Scheduled Caste within the State of Kerala when found to be migrated from his State of origin - Tamil Nadu (presently Madras) and (ii) whether he is a converted Christian and can claim the benefit of Scheduled Caste while contesting a constituency reserved for Scheduled Caste.

8. It is an admitted case that "Parayan" is a Scheduled Caste in 'The Constitution (Scheduled Caste) Order, 1950', both in relation to State of Kerala and State of Tamil Nadu (Madras). But the dispute is with respect to whether the respondent can claim the benefit of scheduled Caste in relation to State of Kerala when it is admitted that their parents migrated from Tamil Nadu. Necessarily, the impact of 'The Constitution (Scheduled Caste) Order, 1950' in relation to State of Kerala and State of Tamil Nadu requires consideration. Section 5 of 'The Representation of Peoples Act, 1951' provides that, a person shall not be qualified to be chosen to fill a seat

in the Legislative Assembly of a State unless (a) in the case of a seat reserved for the Scheduled Caste or for Scheduled Tribes of that State, he is a member of any of those Castes or of those Tribes and (b) is an elector for any Assembly Constituency in that State. In fact, Section 5 constitutes atleast two limbs so as to enable a person to contest or fill a seat in the Legislative Assembly reserved for the Scheduled Caste or Scheduled Tribe i.e. (i) he should be a member of any of the Scheduled Caste or Tribe in that State and (ii) should be an elector for any Assembly Constituency in that State. Necessarily, a person who is a member of Scheduled Caste or Scheduled Tribe "of that State" and an elector for any of the Assembly Constituency "in that State" alone can fill a seat in the Legislative Assembly reserved for any Scheduled Caste or Scheduled Tribe as the case may be. The above two qualifications imposed to fill a seat in the Legislative Assembly reserved for Scheduled Caste or Scheduled Tribe would show that it is based on the State-wise recognition. The user of the expression "of that State" and "in that

State” makes it mandatory that the qualification of a particular person to fill a seat reserved for Scheduled Caste or Scheduled Tribe is based on the State-wise status that he should be an elector in that State and also that he should be a member of any such scheduled caste or scheduled tribe in that State. In short, a State-wise recognition was given so as to ascertain the competency and qualification based on the caste or tribe in relation to a seat reserved for Scheduled Caste or Scheduled Tribe in any particular State. The corollary is that the person who is having the status of an elector and a member of any Scheduled Caste or Scheduled Tribe in relation to the constituency of a particular State reserved for the said Tribe or the Caste alone will stand qualified to take the benefit. There is no dispute that the respondent is an elector within the State of Kerala. Now, the question remains for consideration is whether he is a member of Scheduled Caste within the State of Kerala.

9. It is not in dispute that the grandparents of the respondent migrated from Tamil Nadu to Idukki District,

Kerala as workers of Kundala Estate in Idukki. But according to the petitioner, they migrated to Kerala in the year 1951. The grandparents of the respondent were Pushpam and Lakshmanan. The year in which they have migrated as advanced by the petitioner is disputed and denied by the respondent stating that it was in the year 1940 and not in the year 1951 i.e. prior to the commencement of 'The Constitution (Scheduled Caste) Order, 1950' and prior to the formation of States on linguistic basis, which came into effect in the year 1956.

10. Since it is an admitted case of the respondent that his grandparents migrated from Tamil Nadu, the initial burden to prove his identity, if any acquired within the State of Kerala after migration is resting on the person who claims that he had acquired a different status in the State of Kerala apart from that of the State of his origin i.e. he is a member of Scheduled Caste within the State of Kerala. The constitutional provisions - Articles 341 and 342 giving additional benefits to a sect of people - Scheduled Caste/Scheduled Tribe is based on the

backwardness of that community/caste in relation to the State in which they belong. Articles 341 and 342 of the Constitution of India are extracted below for reference:

"341. Scheduled Castes.-

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor 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 or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342.Scheduled Tribes.-

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or

part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

(emphasis supplied)

11. The President may with respect to any State or Union Territory and in the case of State in consultation with Governor thereof by publication specify caste, race and tribes deemed to be Scheduled Caste or Tribes in relation to that State or Union Territory as the case may be. A mere perusal of Article 341 and 342 of the Constitution which are identical in all respects though dealing with Scheduled Caste and Scheduled Tribe separately mandates the very same procedure and it can be only with respect to any State or Union Territory. In other words, any Scheduled Caste or Scheduled Tribe can be recognised and notified in respect of any State or Union Territory and not otherwise. The abovesaid two constitutional provisions permit a notification by the President of India to notify any Caste or Tribe or any sect within any Caste or Tribe be the Scheduled Caste or the Scheduled Tribe as the case may be, for the purpose of benefit conferred under those two

Articles and it must be based on the State-wise recognition or in relation to any particular Union Territory as the case may be. In the matter of State-wise recognition of any Scheduled Caste or Scheduled Tribe, it should be after consultation with the Governor of such State. This would make the legal position clear that for giving the status of Scheduled Caste or Scheduled Tribe in relation to any State, the abovesaid requirement of consultation with the Governor of that State is mandatory, which would presuppose that it would give effect with respect to that State alone, for which the Governor of that State has to be consulted as mandated under Article 341 and 342. Hence, the said requirement is a pre-requisite to be complied with. The corollary is that when a notification is issued under either Article 341 or 342 in consultation with the Governor of a particular State, that notification would operate only with respect to that State more specifically those who have been notified as Scheduled Caste or Scheduled Tribe among the caste, tribe or any sect of people in that State. It is also within the jurisdiction of Parliament by law to

include or exclude any caste or Tribe by notification. In both the Articles, the power that can be exercised by the Parliament or President of India is to notify a Scheduled Caste or Scheduled Tribe among the Caste or Tribe or sect of people in that State or Union Territory as the case may be and they alone will stand either as a Scheduled Caste or Scheduled Tribe within that State or Union Territory and not otherwise. This would make the legal position clear that a Scheduled Caste or a Scheduled Tribe notified in relation to a particular State or Union Territory may not be a Scheduled Tribe or Scheduled Caste in relation to some other State or Union Territory. To put it in short, any benefit granted under Article 341 and 342 of Constitution of India can be availed of by those who are recognized and notified in relation to that particular State or Union. There comes the question, what would be the legal position when a person belonging to a Caste or Tribe migrated to any other State from the State of his origin and whether he can claim the benefit under Article 341 or 342 (as the case may be) in relation to his State of origin within the State of

his migration.

12.It is relevant to take note of the legal position settled by the Constitution Bench of the Apex Court in **Marri Chandra Shekhar Rao v. Dean, Seth G.S.Medical College and Others [(1990) 3 SCC 130]**, wherein the question principally came up for consideration is whether a person can claim benefit of either Scheduled Caste or Scheduled Tribe in any State other than the State of his origin and answered the issue in paragraph 13 of the said judgment, which is extracted below for reference:

"13.It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in *Venkataramana Devaru v. State of Mysore* [1958 SCR 895, 918 : AIR 1958 SC 255] , where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights

that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all – to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words “for the purposes of this Constitution” must be given full effect. There is no dispute about that. The words “for the purposes of this Constitution” must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression “in relation to that State” would become nugatory if in all States the

special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

13. The abovesaid question also came up in yet another decision in **Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India and Another**

[(1994) 5 SCC 244], wherein the legal position was reiterated in the following lines:

"We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste,tribe or class in the State which may be totally non est in another state to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two states but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely, because a given caste is specified in State-A as a scheduled caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights privileges and benefits admissible to a member of the Scheduled Caste of the latter state for the purposes of this Constitution. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Article 341 and 342 of the Constitution."

14. It was followed by the Apex Court in **Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others [(2009) 15 SCC 458]** reiterating the said legal position. But the contention raised by the respondent

is that all these decisions are pertaining to entitlement of migrants after the commencement of 'The Constitution (Schedule Caste) Order, 1950 and as such, may not have application in the instant case on the reason that the respondent's grandparents migrated to Idukki district in Kerala prior to the commencement of the said Order and the State re-organization based on language. It is also submitted that the wording used in 1950 Order by the President of India is "resident" which has got its own legal implications and as such, it was argued that a person who was a resident of Kerala as on the date of its commencement would stand covered by the abovesaid Order. It is further submitted that nothing was mentioned in the Order with respect to 'State of origin' or 'State of migration' presumably on the reason that what is actually intended by the said Order is to maintain *status-quo* as on the date of its promulgation with respect to any caste or Tribe recognised and notified under the Act and hence it has to be reckoned in relation to the date of commencement of 1950 Order and took reliance from the decision rendered

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by the Apex Court in **Puducherry S.C. People Welfare Association v. Chief Secretary to Govt. Union Territory of Pondicherry (AIR 2015 SC 880)**. Paragraph 15 of the said judgment was brought to the notice of this Court. What is considered by the Apex Court is the competency of the executive or exercise of executive power either to amend, modify or alter or vary the presidential order issued under Clause (1) of Article 341 and 342 of the Constitution. Clause (2) of these two Articles empowers the Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) by the President and it is not amenable for any kind of amendment, modification, alteration or variation at the instance of the executive or by exercising executive power. The State of Kerala pursuant to the communication from the Central Government had issued a Government Order vide G.O.(Ms)No.10/86/SCST DD dated 12/02/1986 giving clarification in the matter of issuance of Scheduled Caste or Scheduled Tribe Certificate to persons who migrate from one State to another. The above said Government Order reads

thus:

"(2) In their letter read as fifth paper above Government of India have issued the following guidelines for issuance of Community Certificate to migrants from one state to another :

1. A person who is temporarily away from permanent place of adobe at the time of notification of the Presidential Order, 1950 applicable in this case, to earn a living or seek education, etc. can be regarded as a scheduled caste or a scheduled tribe, as the case may be, if his caste, tribe has been specified in that order in relation to this state but he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Orders. He will be deemed to be treated a migrant in relation to the latter State to which he has migrated.

2. Further, if a man leaves his originating State and moves to some other State before issue of the Presidential Order, 1950 applicable in his case and settles there permanently by acquiring property whether movable or immovable, that State will be regarded as his/her children's ordinary place of residence (i.e. Permanent abode) for the purpose of issue of the Certificate to him. He/his children will be entitled to obtain a certificate from the competent authority of the latter State provided the community to which he belonged in his originating State has been recognized and scheduled in the Presidential Order applicable in his case in the migrated State. He will not be eligible to obtain a Certificate from his originating State to this effect.

3. Further, a person who has migrated

temporarily for the sake of employment etc. after the issue of the Presidential Order as already clarified in the preceding paragraph, he will be required to obtain a certificate from the competent authority of the migrated State on basis of the genuine certificate issued to his father. Further, the person who has migrated from his originating State to the other State, he and his children will be entitled to enjoy benefits admissible to the Scheduled Castes and Scheduled Tribes from the State of origin and not from the migrated State."

15. The abovesaid State Government Order, though issued pursuant to a communication from the Central Government, cannot be placed or substituted in the place of an order promulgated by the President of India by virtue of Clause (1) of Article 341 or 342 of the Constitution or a legislation made by the Parliament under Clause (2) of the abovesaid Articles and hence invalid and inoperative. The legal position is settled in **Puducherry**'s case (supra) by the Apex Court and it is not within the legislative competence of any State or Union Territory either to promulgate or alter an Order issued by the President of India by virtue of Clause (1) of the abovesaid Articles. Necessarily, the State Government Order viz., G.O.

(Ms)No.10/86/SCST DD dated 12/02/1986 would fall within the mischief of lack of competency, hence invalid and has no legal effect or binding force.

16. The contention that the pleading raised by the petitioner regarding the year in which the grandparents of the respondent migrated to Kerala is inconsistent and cannot be relied on and has no much relevance in the instant case on the reason that the initial burden to prove the actual year or date on which they have migrated to Kerala lies on the person who claims the benefit based on it and not on the person who raised the dispute. Necessarily, the contention raised in the petition that it is after the year 1950 and the oral evidence to the effect that it is in the year 1970 has no relevance especially when it has no inconsistency at all. What is advanced is that the paternal grandparents migrated to Kerala after the commencement of 1950 Order and not earlier. It is well settled that when a person claims any benefit on a specific fact or a contention, the initial burden always would lie on that person, who claims the benefit under any statutory

provision or otherwise and cannot be shifted to the other party who challenges the benefit and the entitlement thereof. The inconsistency, if any, in the evidence and pleading raised by the petitioner, hence will not give any assistance or support in the discharge of the initial burden, which lie on the respondent.

17. The petitioner relies on Ext.P3 proceedings of the Tahsildar, Devikulam, in support of his contention that the grandparents of the respondent migrated to Kerala only after 1950. Ext.P3 is the proceedings in relation to issuance of "Pattayam" (Assignment) in L.A.No.38/1970. The application submitted for assignment of 2 Acres and 50 cents by the grandparents of the respondent was separately marked as Ext.P3(a), in which, they made a declaration in column No.8 to the effect that they were in occupation of the land right from the year 1970 onwards. The nature of occupation is also stated as unlawfully occupied and cultivated land and residing therein with family by constructing a shed, based on which it was argued that when the grandparents had made a signed statement, so as to get

a benefit from the State Government by way of pattayam of property to the effect that their occupation is from the year 1970 onwards, they would stand bound by the said declaration/statement. But it was contended that it is pertaining to the property in question and may not have any application with respect to the actual occupation of parents within the State of Kerala. Of course, there is some weight in the said argument. But what is disclosed in the application, though in relation to the property sought to be assigned, the declaration is to the effect that they came into occupation of the property and cultivated it and began to reside therein from 1970 onwards. The expression "migrated" should always be understood with actual cessation of occupation from the State of origin and migrated to another State with all its consequences, for that purpose, there should be acquisition of movable or immovable property within the State of migration with that intent and a mere residence in a State other than the State of origin either in connection with employment or work or any such character may not by itself bring the residence

within the scope of migration with its necessary intent. All the documents relied on by the respondent would at the most show that his grandparents Lakshmanan and Pushpa came to Idukki in connection with the Estate work at Kundala Estate and they were not having any place of residence or place of abode at the relevant time other than the accommodation granted by the KDF Company and the Kundala Estate for their residence and it is well clear from the documents relied on by the respondent. Exts.R23 and Ext.R24 are the two certificates issued by the Munnar Grama Panchayath pertaining to the Register maintained by Kundala Estate in which there is an entry on 25.11.1952 regarding the birth of a child to Lakshmanan and Pushpa, the paternal grandparents of the respondent. In Ext.R23 nothing was included showing the permanent address or residential address of the grandparents Lakshmanan and Pushpa, but they were shown as workers of Kundala Estate. Ext.R24, though related to the year 1982 and 1984, nothing was mentioned with respect to their place of residence, permanent address or residential address within the State of Kerala. The

address is simply shown as Kundala Estate, Munnar. Hence, they cannot claim any benefit on the ground that what is incorporated in 1950 Order is the word "resident". All these would show that these two records, which were heavily relied on by the respondent is not sufficient to show the actual migration to State of Kerala with all its intent, but they were only mere workers attached to Kundala Estate and came to Kerala for that purpose and accommodation was given to them by the Estate. In fact, there is no evidence to show any permanent address or place of residence to show the actual migration by acquisition of movable or immovable property for that purpose with the intent. The mere fact that they came to Kerala in Idukki District in connection with the work in Kundala Estate by itself will not cloth them with the sanctity of "migrated" unless there is evidence to show the contrary that they have actually settled in Kerala by putting up their own residence and by holding movable and immovable property within the State of Kerala. Mere residence in the accommodation provided to the workers attached with the Kundala Estate may not be

sufficient to bring up a case of actual migration. Exts.X5, X5(a) and X5(b) would reveal that the grandmother of respondent, Pushpam was employed in the Kundala Estate, Idukki, right from 21/02/1949. Her date of birth is shown as 16/11/1933. At that time, she might have been at the age of 16 years. In that document also, no permanent address or residence was shown as that of her or her parents or anyone related to her. The relevance of declaration made by the parents of respondent assumes importance at this juncture and apart from the declaration made, there is no satisfactory evidence to show actual migration prior to the promulgation of 1950 Order. The declaration made by the parents of respondent in Ext.P3(a) application for assignment of land that it is from the year 1970 onwards, they began to occupy the land, cultivated it and resided therein would be sufficient to show that migration was effected only after the commencement of 1950 Order. Hence, they would stand bound by 1950 Order wherein Hindu Parayan though incorporated stands for those who are in the State of Kerala belonging to Hindu Parayan. The respondent and

his predecessors were not Hindu Parayan within the State of Kerala as on the date of promulgation of 1950 Order, though they belonged to the same Community within the State of their origin - Tamil Nadu (Madras) and they can very well claim benefit, if any, conferred upon them in their State of origin and not from the State of Kerala. There is utter failure on the part of the respondent to show and prove that his descendants (the predecessor-in-interest) have migrated to Kerala prior to the promulgation of 1950 Order by the President of India. Then the respondent would stand bound by 1950 Order and the legal position settled thereof by the abovesaid decisions. Hence, the respondent is not a member of Hindu Parayan within the State of Kerala and not qualified to be chosen to fill a seat in the Legislative Assembly of the State of Kerala reserved for Scheduled Caste. Hence, the election of respondent to the 088 Devikulam Legislative Constituency is liable to be declared void.

18. On coming into the next question regarding the alleged conversion to Christianity, the main argument is

based on the allegation that the father and mother of the respondent converted to Christianity in the year 1992 (mistakenly stated as 1982) and the respondent born to them in the year 1984, for which the petitioner relies on two documents, the Family Register and baptism register kept by CSI Church, Kundala. The Family Register was not marked due to an inadvertent mistake on the part of the commissioner who recorded the evidence. Hence the same will stand marked as Ext.X6. In the Family Register, there are several corrections and overwriting by erasing the earlier writings therein. In page No.3, the name of father and mother of the respondent were corrected by overwriting after erasing the relevant portions so as to appear that the father's name is Anthony and mother's name is Mrs.Elsee. The parents name Lakshmanan and Pushpam were also altered considerably by erasing certain portions and converted the same as Mr.L.Ramanan and Pushpamny. It is clearly visible from a mere perusal that the name of Anthony was corrected by erasing the third, fourth and fifth letters - t, h, o, by overwriting the letters b,u,m.

The nature of correction and overwriting made in the Register pertaining to the name Anthony is so conspicuous. Further, the name of father "Lakshmanan" was also corrected by erasing the second, third and fourth letters a, k, s and by putting a dot and the letter 'h' was converted into 'R' by overwriting, thereby converted the same as L.Ramanan. There is also an addition in the name of mother by adding two letters 'ny' to the name Pushpam so as to appear the same as 'Pushpamny'. The name of mother 'Esther' erased and corrected as "Elsee". All these are so conspicuous and clear from a mere perusal which would show an attempt to fabricate evidence so as to appear that the Register is not pertaining to the family of the respondent. These are the Registers kept by the CSI Church, Kundala and the nature of corrections made, which would favour the case of the respondent, would speak volume as to who is behind it. The names of three sons were also reflected in the Family Register as Samson, Johnson and Bennison. In the Baptism Register - Ext.X4, their names were included as baptised on 22/03/1992 under the religious congregation of Diocese of

North Kerala Church of South India (CSI Church), Kundala. All together, five persons were baptised on the same day, who are Antony, Esther Rani, Samson, Johnson and Bennison. The entries made in Ext.X4 with respect to the abovesaid five persons are identical with that of the entries in Ext.X6 Family Register.

19. In the Burial Register - Ext.X3 also, the entire entry No.123 in page No.13 is seen fully and completely erased and a new name and other details are incorporated. According to the petitioner, it is yet another attempt on the part of the respondent in connivance with the church authority so as to destruct the evidence regarding the burial of the mother of respondent as per Christian rituals and faith. All these corrections are visible by a mere perusal. It is also a Register kept by Parish of Pastorate of CSI, Yellapatty under the Diocese of Cochin. The Pastor of CSI Church, one Selva Kumar who was examined as PW9, through whom the entries in the Registers were brought in evidence, had admitted that Entry No.1503 in page No.43 in Ext.X4 is with respect to the person by name Esther, whose

identity was revealed through photograph RAJA(22)JPEG in Ext.P8. He had given oral evidence to the effect that he knows the brother of the respondent by name Shakthivel and in the church records, his name is recorded as Samson. He had also deposed that he knows the mother of Samson and that he had participated in the funeral ceremony of Mrs.Esther as the Pastor of the church. He has also testified that Entry No.1503 in page No.43 is that of the very same lady Esther, the mother of Shakthivel, who is the brother of the respondent. He had also identified the photograph of Esther in Ext.P8 (RAJA (22) JPEG). Burial Register of Yellapatty was marked through him as Ext.X3. He had identified the signature affixed by him in the relevant entry. He had identified the difference in the ink used for the new entry after erasing the old one. The corrections were made by altering and erasing the old entry by incorporating the name of one Annamani and her husband's name Muniyandi. He had also testified that though he is the person who maintained the said Register, he pleaded ignorance with respect to the abovesaid persons Annamani

and her husband Muniyandi. He also admitted that he had not participated in any such burial. This would show and lend support to the fabrication and correction made in the said entry. Further, on cross-examination he had deposed that the entry No.1502 to 1506 at page No.43 of Ext.X4 is with respect to the baptism conducted on five persons by name Antony, Esther Rani, Samson, Johnson and Bennison on 22.03.1992. He had also deposed that he knows the first two persons Antony and Esther Rani, who resided along with the respondent in his house. Further, as discussed earlier, he deposed that he knows Shakthivel, the brother of respondent and his name is entered in the church record as 'Samson'. He visited his house at the time when his mother expired and she was buried in the property of KDH Company. At that time, there was no church graveyard attached to CSI Church, Kundala. Though, he had undergone a very lengthy cross examination, nothing was brought out to discredit his evidence. The oral evidence tendered by the said independent witness and the documents - Family Register kept by the church and the Baptism Register when

appreciated in the light of admission made by the respondent, would sufficiently show that the respondent is the brother of 'Shakthivel', whose name was entered in the church record as 'Samson'. The respondent while in the box had admitted that Antony is none else his father and the name of his mother is not Esther Rani, but Easwari and that there are four sons born in the wedlock and one son passed away at the age of six months. This amounts to an indirect admission by the respondent that as on the date of alleged baptism covered by Ext.X4, he was having only two brothers and one among them is 'Samson', who according to PW9 is the brother of the respondent. It is an admitted case of the respondent that his father is Antony and he was having two brothers and one among the brothers is 'Shakthivel'. In fact, in Ext.X4, the first person who was baptised is the abovesaid Antony, the father of Shakthivel (Samson), which was testified by PW9, the Pastor, who conducted baptism on these persons. This would sufficiently show that the five persons entered in the Baptism Register are none else, the respondent and his two brothers and their father and

mother. According to the respondent, he is the youngest son and it is also evident from the Baptism Register that the last son Bennison was also baptised on the same day. So it can be safely concluded that the entries in the Baptism Register, Ext.X4 pertaining to five persons with serial Nos. 1502, 1503, 1504, 1505 and 1506 - Antony, Esther Rani, Samson, Johnson and Bennison are none else the respondent and his two brothers and their father and mother. The evidence adduced by PW9 and the Registers produced are sufficient to show the identity of the abovesaid persons.

20. Even in Ext.X6, the Family Register, the entries are the same. Their names entered in the Family Register kept by the CSI Church, Kundala Congregation, would clearly reveal their identity as the person professing Christianity under the CSI Church, Kundala.

21. The marriage photographs taken pertaining to the marriage of respondent is recorded in a Compact Disk produced and marked as Ext.P8. The admissibility of the said Compact Disk in evidence is challenged in view of the fact that it is an electronically recorded one and the

certification as mandated under Section 65B of the Evidence Act was not complied with. The legal position is now settled by a three Judge Bench of the Apex Court in **Anvar P.V. v. P.K. Basheer and Others [2014 KHC 4602]**. The subsequent clarification given by a Division Bench of Apex Court in **Shafhi Mohammad v. State of Himachal Pradesh [2018 (2) KHC 80 (SC)]** was not accepted by another three Judges Bench of Apex Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others [(2020) 7 SCC 1]**, but reiterated the legal position settled by the larger Bench in **Anvar's** case (Supra) and hence, the requirement under Section 65 B of the Evidence Act is mandatory. But, it is a case wherein the respondent - RW2 had admitted the photographs recorded in the Compact Disk as that of him and taken at the time of his marriage by one Peter and hence the admission so made by the respondent would relieve the party from the compliance of requirement as mandated under Section 65 B of the Evidence Act. In his deposition, he had also admitted that Ebenezer Mani, the Pastor attached to CSI Church, Kundala had also participated in the

marriage, but advanced a case that he was only an invitee and not the Minister or the Pastor, who was invited to preside the marriage ceremony as per Christian religious rites. At the same time, it is an admitted fact by RW2, the respondent, that the photographs - Exts.P5 and P6 were taken by one Peter. To a specific question as to whether there was any observances of rituals in connection with Hindu marriage at the time of his marriage, he had pointed out the lighting of customary lamp and tying of Thali as part of Hindu rites, but for the same, there is no evidence at all except his interested testimony. In the photograph taken, there is nothing to show either the lighting of customary lamp or keeping a Thali or tying of Thali, though these are the main observances and vital as far as Hindu marriage is concerned. But the photographs taken are only with respect to other observances which are identical with that of Christian marriage. He pleaded ignorance whether the 'holy Bible' was read over at the time of marriage. In fact, it was not denied by him, but pleaded that he could not recollect it. A strange story was also

narrated by the respondent that none of the photographs which were taken or any album prepared in that behalf were forwarded to him by the photographer Peter. Strange enough, he pleaded ignorance about who had given the chain along with Thali to him. Further, he pleaded ignorance about participation of any priest or poojari in connection with the performance of religious observances. A conscious effort on the part of the respondent to conceal the truth is well evident from the fact that he had given evasive answers to various material aspects of his marriage and marriage ceremony. The dress worn by him at the time of marriage by wearing an overcoat is yet another indication regarding the way in which the marriage was conducted. The dress worn by his wife is also identical as that of a Christian marriage. The presence of Ebenezer Mani, the Pastor admitted by him lends further support to the case advanced by the petitioner. It is admitted by him that the mother blessed him by touching on his forehead to a specific question whether it is by drawing holy cross on his forehead. A strange story was narrated as to how the

grandparents of the respondent had given a Christian name to his father. All these would sufficiently show that the respondent was actually professing Christianity at the time when he had submitted his nomination and converted to Christianity long before its submission. As such, after the conversion, he cannot claim as a member of Hindu religion. On that score also, the Returning Officer ought to have rejected his nomination. In short, on both the grounds, it is clear that the respondent is not a member of "Hindu Parayan" within the State of Kerala and not qualified to be chosen to fill a seat in the Legislative Assembly of the State of Kerala reserved for Scheduled Caste - the Legislative Assembly Seat of 088 Devikulam Legislative Constituency and hence the election of respondent as the returned candidate for the said Constituency (088 Devikulam Legislative Constituency) in the year 2021 (06/04/2021) is declared void under Section 98 of Representation of People Act, 1951. There is no claim for the petitioner for declaring him as the returned candidate from the said Constituency, hence, no such issue

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was taken up for consideration.

22. In the result, the Election Petition is allowed and the election of returned candidate, the respondent, to the Kerala Legislative Assembly from 088 Devikulam Assembly Constituency in the year 2021 (06/04/2021) is declared void.

The Registry is directed to forward certified copies of this judgment to the Election Commission of India and the Speaker(Chairman) of the State Legislative Assembly, State of Kerala, forthwith to publish the same in the official Gazette of the State as mandated under Section 106 of the Representation of People Act, 1951.

sd/-

P. SOMARAJAN
JUDGE

SV

APPENDIX

PETITIONER'S ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE CASTE CERTIFICATE OF THE RESPONDENT DATED 10/03/2021 ISSUED BY THE TAHSILDAR, DEVIKULAM WITH ENGLISH TRANSLATION.
- ANNEXURE A2 TRUE COPY OF THE PHOTOGRAPH SHOWING MARRIAGE CEREMONY OF THE RESPONDENT.

PETITIONER'S EXHIBITS

- EXT.P1 CASTE CERTIFICATE DATED 10.03.2021 ISSUED BY TAHSILDAR, DEVIKULAM
- EXT.P2 NOMINATION PAPER OF THE RESPONDENT WITH RECORDS SUBMITTED ALONG WITH IT
- EXT.P3 THE PROCEEDINGS OF TAHSILDAR, DEVIKULAM IN RELATION TO PATTA COVERED BY LA NO.38/76
- EXT.P3 (A) APPLICATION FOR ASSIGNMENT OF LAND ON REGISTER, LEASE OR LICENSE
- EXT.P4 THE PROCEEDINGS OF TAHSILDAR, DEVIKULAM IN RELATION TO PATTA NO.796 OF 2009
- EXT.P5 PHOTOGRAPH SHOWING MARRIAGE CEREMONY OF THE RESPONDENT
- EXT.P6 ANOTHER PHOTOGRAPH SHOWING MARRIAGE CEREMONY OF THE RESPONDENT
- EXT.P7 CERTIFICATE DATED 10.03.2021 ISSUED BY TAHSILDAR, DEVIKULAM
- EXT.P8 COMPACT DISC

RESPONDENT'S EXHIBITS

- EXT.R1 CERTIFICATE ISSUED BY THE DEPUTY GENERAL MANAGER OF KANNAN DEVAN HILLS PLANTATIONS DATED 17/11/2021
- EXT.R2 CERTIFICATE OF BIRTH ISSUED BY THE PRESIDENT OF MUNNAR GRAMA PANCHAYAT DATED 30/07/2003
- EXT.R3 CERTIFICATE OF BIRTH ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, MUNNAR GRAMA PANCHAYAT DATED 24.04.2016
- EXT.R4 EXTRACT OF SCHOOL ADMISSION REGISTER PERTAINING TO ADMISSION AT THE ALPS, KUNDALA

DATED 17/08/2021

- EXT.R5 SECONDAY SCHOOL LEAVING CERTIFCATE ISSUED BY THE SECRETARY, BOARD OF PUBLIC EXAMINATIONS, KERALA SIGNED BY THE HEADMASTER, GOVERNMENT HIGH SCHOOL, MEPPADI ON 31/03/2000
- EXT.R6 CASTE CERTIFCATE BEARING NO.J2.5715/04/K-DIS. ISSUED BY THE TAHSILDAR, DEVIKULAM ON 28.05.2004
- EXT.R7 CASTE CERTIFCATE BEARING NO.J2:2643/11/K.DIS ISSUED BY THE TAHSILDAR, DEVIKULAM ON 24/02/2011
- EXT.R8 COMMUNITY CERTIFCATE BEARING NO.29127075 ISSUED BY THE TAHSILDAR, DEVIKULAM TALUK ON 27/11/2017
- EXT.R9 COMMUNITY CERTIFCATE BEARING NO.55103088 ISSUED BY THE TAHSILDAR, DEVIKULAM TALUK ON 09/03/2021
- EXT.R10 COMMUNITY CERTIFCATE DATED 08/01/2008 ISSUED TO RESPONDENT'S WIFE SHYNI PRIYA
- EXT.R11 COMMUNITY CERTIFCATE DATED 08/07/2015 ISSUED TO RESPONDENT'S WIFE SHYNI PRIYA
- EXT.R12 COMMUNITY CERTIFCATE DATED 07/04/2018 ISSUED BY TAHSILDAR, DEVIKULAM TALUK OFFICE TO SHYNI PRIYA
- EXT.R13 SECONDARY SCHOOL LEAVING CERTIFCATE ISSUED BY SECRETARY, BOARD OF PUBLIC EXAMINATION, KERALA TO RESPONDENT'S WIFE SHYNI PRIYA DATED 21/07/2011
- EXT.R14 CASTE CERTIFCATE ISSUED BY THE TAHSILDAR DEVIKULAM IN APRIL 2007 TO SHYNI PRIYA
- EXT.R15 TRANSFER CERTIFCATE ISSUED BY THE PRINCIPAL, UNIVERSITY COLLEGE OF NURSING ON BEHALF OF SCHOOL OF MEDICAL EDUCATION, MAHATMA GANDHI UNIVERSITY ON 28.05.2021 TO SHYNI PRIYA
- EXT.R16 DEATH CERTIFCATE OF RESPONDENT'S MOTHER ISSUED BY THE OFFICE OF THE LOCAL REGISTRAR OF BIRTHS AND DEATHS, DEVIKULAM GRAMA PANCHAYAT DATED 12/05/2017
- EXT.R17 AADHAAR CARD OF RESPONDENT'S MOTHER ISSUED BY

GOVT. OF INDIA

- EXT.R18 IDENTITY CARD ISSUED FOR ELECTORAL PURPOSE BY THE ELECTION COMMISSION ON 20//01/1999 TO RESPONDENT'S MOTHER
- EXT.R19 MARRIAGE CERTIFICATE ISSUED UNDER SPECIAL MARRIAGE ACT, 1954 ISSUED BY THE MARRIAGE OFFICER FOR DEVIKULAM ON 05.07.2014 CERTIFYING THE MARRIAGE SOLEMNIZED ON 21/04/2014
- EXT.R20 ARREARS OF PAY SLIP ISSUED TO GRANDMOTHER PUSHPAM DATED 23/10/1993 BY THE KUNDALA ESTATE MANAGER
- EXT.R21 CERTIFICATE DATED 28/10/2011 ISSUED TO PRINCY THE COUSIN FROM KANNAN DEVAN HILLS PLANTATION
- EXT.R22 PAY SLIP ISSUED TO GRANDMOTHER PUSHPAM IN MAY 1993 BY THE KUNDALA ESTATE MANAGER
- EXT.R23 THE EXTRACT OF THE BIRTH REGISTRATION OF RAJA'S FATHER FROM THE REGISTER ISSUED BY MUNNAR GRAMA PANCHAYATH ON 25/05/2022
- EXT.R23 (A) COVERING LETTER OF EXT.R23 (MARKED IN CHIEF EXAMINATION BUT NOT PRODUCED BY THE COMMISSIONER IN PENDRIVE)
- EXT.R24 THE EXTRACT OF THE BIRTH REGISTER OF RAJA'S BROTHER SARAVANAN ISSUED FROM MUNNAR GRAMA PANCHAYAT
- EXT.R24 (A) THE EXTRACT OF THE BIRTH REGISTER OF RAJA ISSUED FROM MUNNAR GRAMA PANCHAYAT
- EXT.R24 (B) COVERING LETTER ENCLOSING EXHIBITS R24 AND R24 (A)
- EXT.R25 NOTARIZED COPY OF THE AADHAR CARD OF RAJA'S BROTHER SHAKTHIVEL

COURT EXHIBITS

- EXT.X1 ADMISSION REGISTER - 3
- EXT.X1 (A) SCHOOL ADMISSION REGISTER
ADMISSION NO.2668 TO 2677 (1 PAGE)
- EXT.X1 (B) SCHOOL ADMISSION REGISTER
ADMISSION NO.2798 TO 2807 (1 PAGE)

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EXT.X2	BAPTISM REGISTER FROM 2008 ONWARDS
EXT.X3	BURIAL REGISTER
EXT.X4	BAPTISM REGISTER 1977 TO 2008
EXT.X5	KUNDALY ESTATE EAST DEVISION GRATUITY LIABILITY AS AT 31ST DEC. 1976 - LABOUR
EXT.X5 (A)	GRATUITY LIABILITY REGISTER FOR THE PERIOD COMMENCING FROM 1939 TO 1972
EXT.X5 (B)	GRATUITY BOOK NO.1 FROM 1994 TO 2009
EXT.X6	FAMILY REGISTER

PETITIONER'S WITNESSES

PW1	D.KUMAR
PW2	ARUL RAJ
PW3	SABARI @ SAVAMUTHU
PW4	SASIKUMAR
PW5	SIVASHENBAGALINGAM
PW6	ABRAHAM MILEN
PW7	PETER
PW8	EBENEZER MANI
PW9	SELVAKUMAR

RESPONDENT'S WITNESSES

RW1	SANJAY UPMAN
RW2	A.RAJA