

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD

WRIT PETITION NO.27398 OF 2021

Between:

Sandepu Swaroopa and another

... Petitioners

AND

Union of India, represented by the
Secretary, Ministry of Human Resource Development & others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 19.07.2023

SUBMITTED FOR APPROVAL:

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

1. Whether Reporters of Local Newspapers Yes
 may be allowed to see the judgment?
2. Whether the copies of judgment may be yes
 marked to Law Reporters / Journals?
3. Whether His Lordship wish to
 see the fair copy of the Judgment? yes

LALITHA KANNEGANTI, J

*** HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

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Secretary, Ministry of Human Resource Development & others

... Respondents

! Counsel for Petitioners : Mr. M. Venkanna

^ Counsel for Respondents 1 and 2: Asst. Solicitor General
Counsel for Respondents 3 and 4: GP for School Education
Counsel for Respondent No.5: Standing Counsel for Municipality.

< Gist:

> Head Note:

? Cases referred:

¹ 2014(6) Mh.LJ 395

² (2015) 10 SCC 1

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No. 27398 OF 2021

ORDER:

This Writ Petition is filed seeking the following relief:

“ to issue a writ, order or direction more particularly one in the nature of writ of mandamus under Article 226 of the Constitution of India declaring the inaction of the respondents in taking any action even after receiving the repeated representations of the petitioners dated 7.4.2019 onwards for their family social identity stating their new born child's status of religion and caste as no religion and no caste in the birth certificate and the denial of the same is against the very secular spirit of the Indian Constitution apart from being violative of the Articles 14, 19 and 21 and also 25 of Constitution of India consequently direct the respondents to issue the certificate of “No Religion and No Caste” in all Birth Certificate forms which is an online Format to those who opt for it like the petitioners and also further direct the concern respondents to take steps and issue guidelines and make changes accordingly in the forms including on line formats that whenever any one applies like the petitioners they have to receive such application and have to record their identity with “No Religion and No Caste” as opted by them in addition to all other Religious identities existing there in all the official records of state and central Government like the Census Recording forms and formats, Birth Certificates, School admissions or school leaving records and certificates and pass such other order or orders that deem jut and proper in view of the facts and circumstances and in the interest of justice.”

2. Sri M. Venkanna, learned counsel for petitioners submits that petitioners are wife and husband and their marriage was a love marriage. They belong to two different religions. The 1st petitioner is B.Sc., B.Ed. Graduate working as

Journalist in “Nava Telangana” and the 2nd petitioner is a post-graduate with M.A.B.Ed. and she is also a writer and founder member of Osmania University Research Scholars Forum since 2013. Presently, she is working as Editor of “Campus Voice”. It is submitted that the petitioners’ son born on 23.03.2019 and was named as Evan Rudea. When they wanted to apply for birth certificate, they found that it is must to fill the religious status of the child in column No.9 without which the Application is incomplete and the same cannot be presented. Under the religion column, the options given are 1) Hindu, 2) Islam, 3) Christian and the 4th one is ‘other religions’. “Any other” option also prescribed under Religion column only, but there is no option for non-religious practitioners or identity. It is submitted that India is a secular country and by virtue of these applications, they cannot compel a citizen to mention that he / she belongs to a particular religion against their will and wish by virtue of *on line* platform. It is submitted that the petitioners have made representations to all respondents and requested them to consider the request and give them a provision to claim the child status as non-religious and no caste. As this being an *on line* registration application format which will decide for all future purposes such as school admission certificate, etcetera,

he could not fill his son's *on line* application format and did not get the birth certificate till now. Learned counsel submits that in 2011 August 14, the petitioners married without any religious rituals of any religion to which both of them belong respecting one another's belief, they want to live a democratic way of life. They want to bring the children without any religious formalities or caste practices as a non-believer family at their home or outside home. They wanted to nurture and nourish him in such a way that they cherish a true democratic and humanistic values in their day to day life. They have promised the child in their letter written to him which was filed with this affidavit in the material papers which speaks their outlook towards life. It is submitted that when the petitioners have posted this letter in facebook, they got hundreds of positive responses saying that they too want their children to bring up in a similar way. He submits that thereafter so many couples who want their children identity as "Non religious and no caste only". The cause of action arose on 07.04.2019 when the respondents have insisted to mention the religious identity in the application under column 9. In spite of their repeated representations and also submitting that their marriage is a inter-caste, inter-religious marriage, the respondents failed to heed to their

request. Then the 1st respondent has advised the petitioners to go and get permission from the municipal department by way of a G.O. or Rule or any authoritative guideline in this regard and in the absence of such thing they have rejected their application and the result is outright rejection of the birth certificate. Learned counsel submits that thereafter the petitioners made several enquiries and they could not get any supporting material and approached the Secretariat and the Municipal Administration who asked them to give a written representation. Then on 14-04-2019, the petitioners made a written representation to Respondents 3 and 4 who are the highest authorities in the State and also Respondents 1 and 2 being the authorities at central level but they did not get any response from them. Again the petitioners made a representation seeking permission to identify as non-religious category but till date they have not received any such response. He submits that being a socially-conscious and responsible citizen, this problem is not faced by the petitioners alone and several people are suffering in a similar way, despite their total disagreement, they are forced to state their child's caste and religion against their will and wish. Even at the central level, Respondents 1 and 2 have to take the responsibility in addressing the issue. Learned counsel

also submits that India is a secular country and everyone's belief has to be respected as per the Constitution of India. Every citizen has the right to choose and practice any religious way of life or non-religious way of living or ideology. No one can insist particular religious practice or status of identity. It has to be respected and recognized ones choice of practicing religion or not to practice any religion according to their choice. Disrespect in this regard is nothing but violating the fundamental rights of the citizen. He submits that this action of the respondents in insisting the petitioners to write the caste of the child is nothing but violating the constitutional rights guaranteed to a citizen. He further submits that whether one is an atheist, rationalist, radical humanist, socialist or a communist, he / she or all those who are lakhs in number in India and who claim and subscribe to this would definitely agree to the status of being recognized as "non- religious and no caste". He submits that even in our Indian Census enumeration, while enumerating the population, the primary aim is to give identity to every person, there is no such column called 'non-religious' in its list. If once the religion or caste is entered in the birth certificate, it will be a recurring problem to the parent and child not only at the stage of school admission but also at the stage of issuing school leaving

certificate called TC they have to face the similar problem. There also arises the same problem, so it has to be addressed. Hence, when all the respondents failed to address their grievance, they have come before this Court seeking the relief.

Learned counsel has relied on the judgment of the Bombay High Court in ***Ranjeet Suryakant Mohite (Dr) v. Union of India***¹ and submits that the High Court of Bombay had issued a direction to the respondents not to compel any individual to declare or specify his religion in any form or any declaration and by virtue of Article 25 of the Constitution of India, every individual has right to claim that he does not belong to any religion and that he does not practice or profess any religion. He submits that the Bombay High Court while dealing with the said Writ Petition had considered the judgments of the Hon'ble Apex Court in ***Ratilal Panachand Gandhi v. State of Bombay***², ***S.P. Mittal v. Union of India***³, ***Sri Sri Sri Lakshamana Yatendrulu v. State of A.P.***⁴ and ***Commissioner of Police v. Acharya Jagdishwarananda Avadhuta***⁵ and allowed the Writ Petition. Learned counsel

¹ 2014(6) Mh.LJ 395

² AIR 1954 Supreme Court 388

³ AIR 1983 Supreme Court 1

⁴ (1966) 8 SCC 705

⁵ (2004) 12 SCC 770

submits that the petitioners are entitled to the same relief and a direction to the respondents not to insist to disclose the caste.

3. On behalf of the 2nd respondent, a counter-affidavit is filed by the Assistant Solicitor General. It is stated that births and deaths are registered under the provisions of a Central Act namely 'Registration of Births and Deaths Act, 1969' (for short, 'RBD Act') and corresponding State Rules made thereunder. As the subject of birth and death registration comes under the concurrent list of the Constitution, implementation of the provisions of RBD Act is on the State Governments for which Chief Registrar of Births and Deaths has been declared as Chief Executive Authority in the State/ UT and at central level, the Registrar General, India only coordinates and unifies the activities of the Chief Registrars of Births and Deaths in the matter of registration of births and deaths. It is stated that Registration of Births and Deaths is mandatory with the enactment of Registration of Births and Deaths Act. To carry out the provisions of the Act, the Office of Registrar General, India has framed Model Registration of Birth and Deaths Rules, 1999 and circulated to all the States in order to facilitate the State Governments for framing their own Rules. Consequently, on the basis of the Model Rules, State Governments framed their own

State Rules and forms with the prior approval of Central Government. The information on religion under item 'Religion of the family' with options as 'Hindu', 'Muslim', 'Christian' and 'any other religion' is collected under statistical part of the reporting form and used for statistical purpose only. Hence, the same is not reflected in the birth and death certificate. The specific forms for reporting the birth and death events are prescribed by the respective State Governments. Hence, it relates to Respondents 4 and 5 and State Government of Telangana through the Chief Registrar of Births and Deaths. It is submitted that there are no such column even in the census enumeration also. It is stated that there are two separate questions in census to record 1) name of religion of the person and (ii) whether the person is Scheduled Caste (SC) or Scheduled Tribe (ST) or not a SC/ST and if the person belongs to SC or ST, then to write the name of caste or tribe. The census enumerators are instructed to record the religion of each member of the household as reported by the respondent. If no religion is reported by any person, then enumerator will record accordingly. Likewise a person can be categorized as SC or ST or non-SC/ST in census as reported by the respondent. It is submitted that as far as inclusion of option of 'no religion' in the

statistical part of the birth reporting form is concerned, it is to be clarified by the State Governments through Chief Registrar of Births and Deaths who is the Chief Executive Authority for execution of the provisions of the Registration of Births and Deaths Act and the Rules made there under. The form of reporting forms and certificates of birth and death are prescribed by the respective State Governments under the Act. Therefore, the relief sought by the petitioners can only be considered by the State Government.

4. No counter affidavit has been filed on behalf of Respondents 3 to 5.

5. Having heard learned counsel on either side, perused the entire material on record.

6. The Hon'ble Apex Court in case of **ABC v. State (NCT of Delhi)**⁶ while dealing with the case of a single mother who wanted her name alone to be reflected in the birth certificate has observed that the law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents. The Apex Court directed that if a single parent / un-wed mother applies for issuance of a birth certificate for a child born from her womb, the authorities

⁶(2015) 10 SCC 1

concerned may only require her to furnish an affidavit to that effect and must thereupon issue the birth certificate, unless there is a Court direction to the contrary. It is emphasised by the Apex Court that it is the responsibility of the State to ensure that no citizen suffers from any inconvenience or disadvantage merely because the parents fail or neglect to register the birth. It is the duty of the State to take requisite steps for recording birth of every citizen.

7. Before going into the merits of the matter, it is appropriate to look at Article 25 of the Constitution of India, which reads thus:

“ 25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

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

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

8. Article 25 of the Constitution of India confers freedom of conscience on a citizen which is a fundamental right guaranteed to a citizen. It confers the right to freely profess, practice or propagate any religion, which includes in it the citizens right to say that he does not believe in any religion and he does not want to profess, practice or propagate any religion. The citizen has a right to act as per his conscience and beliefs. The State cannot compel the citizen to profess or declare that he belongs to one religion or the other. If he is compelled to do so, it is nothing but infringing his fundamental rights guaranteed by the Constitution of India. The society is continuously evolving and as per the mandate of the Constitution, the State has to make the changes wherever required as per the changing needs as change is inevitable. At all times, the State has to respect the human rights and bring harmony in the society. In this case, the petitioner and his wife who belongs to two different religions, who do not believe in the concept of religion want to bring up the children as per their beliefs. The Hon'ble

Apex Court in case of ***Navej Singh Johar v. Union of India***⁷ has held that it is not only the duty of the State and the judiciary to protect the basic right to dignity but the collective at large owes a responsibility to respect one another's dignity for showing respect for the dignity of another is a constitutional duty. It is an expression of the component of constitutional fraternity. The Constitution has ladened the judiciary with the very important duty to protect and ensure the right of every individual including the right to express and choose without any impediments so as to enable an individual to fully realise his / her fundamental right to live with dignity. The Hon'ble Apex Court further held as under:

“ Human dignity is an essential element of meaningful existence. A life of dignity comprehends all stages of living including the final stage which leads to the end of life. Liberty and autonomy are essential attributes of a life of substance. It is liberty which enables an individual to decide upon those matters which are central to the pursuit of a meaningful existence. The expectation that the individual should not be deprived of his or her dignity in the final stage of life gives expression to the central expectation of a fading life : control over pain and suffering and the ability to determine the treatment which the individual should receive. When society assures to each individual a protection against being subjected to degrading treatment in the process of dying, it seeks to assure basic human dignity. Dignity ensures the sanctity of life. The recognition afforded to the autonomy of the individual in matters relating to end-of-life decisions is ultimately a step towards ensuring that life does not despair of dignity as it ebbs away.”

⁷(2018) 10 SCC 1

The Hon'ble Apex Court has further observed that the Constitution like ours is an organic and breathing documents with senses which are very much alive to its surroundings, for it has been created in such a manner that it can adapt to the needs and developments taking place in the society. It is the responsibility of all concerned to transform the constitutional idealism into reality. The petitioners have every right not to follow or profess any religion and such right is implicit in Article 25 of the Constitution of India. It is the bounden duty of the respondents to act in consonance with the rights guaranteed to the citizen by the Constitution of India. The system has to evolve along with the times, the changing requirements of the citizens. The constitutional court cannot remain a mute spectator to the legitimate requirement of a citizen.

9. In the light of the above discussion, this Court is of the considered opinion that the petitioner has every right not to specify the religion or caste in the birth certificate.

10. Accordingly, the Writ Petition is allowed directing the respondents to provide a column for "no religion", "no caste" in the *on line* application format and receive the petitioners' application for registering the birth of their son, by

virtue of Article 25 of the Constitution of India. He has every right to claim that he does not belong to any religion /caste. No costs.

11. Consequently, the miscellaneous Applications, if any shall stand closed.

19th July 2023

LALITHA KANNEGANTI, J

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