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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 15TH DAY OF JANUARY 2018 / 25TH POUSHA, 1939

WP(C).No. 16515 of 2009

PETITIONER :

AYSHA, AGED 67 YEARS,
D/O.LATE SANKARAN NAMBISSAN, HYRANA HOUSE,
BLDG.NO.22/87, PERINTHALMANNA MUNICIPALITY,
OPP.MUNICIPAL TOWN HALL, PERINTHALMANNA.

BY ADVS.SRI.P.K.IBRAHIM
SMT.K.P.AMBIKA
SRI.C.N.GOPAKUMAR
SRI.V.S.SHAKKIR JAMEEL

RESPONDENT :

THE DIRECTOR, OFFICE OF THE
DIRECTORATE OF PRINTING DEPARTMENT,
THIRUVANANTHAPURAM, PIN-695 001.

BY GOVERNMENT PLEADER SMT. PRIYA SHANAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-01-2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"CR"

A. MUHAMED MUSTAQUE, J.

.....

W.P.(C).No.16515 of 2009

.....

Dated this the 15th day of January, 2018.

JUDGMENT

This writ petition raises an important question concerning freedom to practice religion. The question is thus, "Do a person require a certificate from an institution to declare that she had converted to another religion or not, for effecting changes in the Government records?"

2. The petitioner, 'Aysha' was known before as 'Devaki'. Her school records would show that she had professed the religion of Hindu. Her son is a medical doctor converted to Islam. Thereafter, she has chosen the path of her son and embraced the religion of Islam. She approached the Government for notification of her change of name and change of religion. It appears that it has to be done through the Directorate of Printing Department of the State Government. By Ext.P6 proceedings, the Director of the Printing Department returned the application stating that the petitioner will have to produce a certificate issued by a recognized institute/organization declaring the conversion of the petitioner to Islam community. As evident from Exts.P7 (c) and (d) Government orders, the Government had authorized two organizations in the State for issuance of certificate of conversion into Islam community. They are Maunathul Islam Association, Ponnani,

Malappuram and Tarbiatul Islam Sabha, Kozhikode.

3. The aforesaid Government Orders are also under challenge in this writ petition apart from challenging the decision of the Director of Printing returning the application.

4. The Government issued Ext.P7 (c) order dated 30.10.2004 noting the fact that the Government had already issued orders authorizing certain organizations to issue conversion certificates in case of those, who have converted to Hindu community and found that it is necessary to issue such guidelines for conversion to Islam community. By the aforesaid Government Order, an exclusive right is given to such organizations to issue a certificate of conversion. The question is whether the Government can insist for production of such certificate for issuance of notification for conversion from one religion to another religion or for the purpose of change of name in accordance with such conversion.

5. The right to profess and practice a religion is a fundamental right. One has the liberty to choose his own faith. Freedom of conscience and practice, as enshrined under the Constitution, is not a mere declaration of a Constitutional right, but a declaration of a right that already exists in the society. The liberty of an individual is a primordial right from time immemorial. The Constitution only had declared such existing right through Article 25 of the Constitution. The Government, therefore, will have to act upon one's declaration as to the change of his faith or conscience.

Maturity of such decision cannot be subjected to any examination by any authority.

6. If the Government doubts as to the genuineness of such claim, the Government can conduct an enquiry as to the veracity of such declaration. No doubt, for the purpose of effecting changes in the Government records and streamlining any procedure, the Government may require some evidence. But that does not mean that, for effecting any changes, the Government can insist for production of any certificate issued by certain authority or organization which has been given an exclusive power for issuance of such certificate. The right to practice cannot be burdened with, based on the certificate issued by an organization or an institution. Free exercise of religion means there are no restraints in practice. If the government order as such is implemented, a person who changes his faith would be at the mercy of such organization to declare his status of change of faith. The Government cannot compel a person to affirm his change of religion, only through a particular mode via-a-via the certificate issued by the authorized organization. Freedom of practice of religion, as guaranteed under the Constitution is unrestricted by any qualification. The power of faith is something which one has inherently possessed in himself. Mere declaration of change of religion would be sufficient for the Government to act upon such changes to be effected in the Government records. As already adverted, the Government, if

entertains any doubt as to the genuineness of such declaration, it can conduct an enquiry through the revenue official like Tahsildar. If the Government insist that to effect changes one need to produce such certificate issued by the organization authorized by the State, certainly, that would amount to a fetter on the freedom guaranteed to such persons by the Constitution. The right to practice religion also includes his right to be known, as belonged to a particular faith or religion.

7. Though there is a challenge regarding the Government order, this Court need not interfere with the order, in the sense that the Government cannot give any exclusive right to such authority for acting upon any request made by a citizen for declaring the status. The direction in the Government order can be treated only as directory and not as mandatory.

8. This writ petition is disposed of, holding that the Government shall not insist for production of any certificate from any authorised institution for acting upon any request made by the citizen for declaring change of his religion and change of name, as a mandatory requirement. The Government can conduct any enquiry as to such declaration, if so warranted, through the officials. The challenge regarding the Government orders is repelled for the reasons stated above, holding that the Government order will not stand in the way of a citizen, declaring his change of religion and name, and the Government will have to act upon such

declaration.

9. In the light of the above, the request of the petitioner shall be considered without insisting for production of certificate issued by the organization/institution mentioned in Exts.P7 (a) and (b). Needful shall be done within a period of three months.

The writ petition is disposed of with the above observations and directions.

Sd/-
A. MUHAMED MUSTAQUE,
JUDGE.

cl

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF RESIDENTIAL CERTIFICATE NO. R1 210640 DATED 5/12/2008 ISSUED BY THE SECRETARY, PERINTHALMANNA MUNICIPALITY.

P2: COPY OF THE CERTIFICATE DATED 2/12/2008 ISSUED BY THE PATHIKARA JUMA MASJID COMMITTEE TO THE PETITIONER.

P3: COPY OF THE PENSION PAYMENT ORDER NO.CNR/18803 DATED 25/7/96 ISSUED BY THE ACCOUNTANT GENERAL.

P4: COPY OF THE APPLICATION DATED 17/12/2008 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT WITHOUT SUPPORTING DOCUMENTS.

P5: COY OF CHALLAN DATED 23/12/2008 FOR PAYMENT OF THE REQUIRED FEE ISSUED BY THE TREASURY OFFICER.

P6: COPY OF THE COMMUNICATION NO.4905/09/D4 DATED 12/3/2009 OF RESPONDENT TOT HE PETITIONER.

P7(a): COPY OF THE DRAFT NOTIFICATION DATED 18/12/2008 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

P7(b): COPY OF THE LETTER DATED 28/4/2009 ADDRESSED TO THE RESPONDENT BY THE PETITIONER.

P7(c): COPY OF THE GOVERNMENT ORDER AUTHORIZING THE ORGANIZATION TO ISSUE CERTIFICATE OF CONVERSION TO ISLAM COMMUNITY DATED 30/10/2004.

P7(d): COPY OF THE GOVERNMENT ORDER AUTHORIZING THE ORGANIZATION TO ISSUE CERTIFICATE OF CONVERSION TO ISLAM COMMUNICTY DATED 9/11/2004.

P8: COPY OF THE PAGES 17 TO 19 OF THE BOOK MULLA, THE PRINCIPLES OF MAHOMEDAN LAW.

P9: COPY OF THE PAGE 60 AND 61 OF OUTLINES OF MUHAMMADAN LAW (4TH EDITION) BY ASAF A.A.FYZEE.

RESPONDENT'S EXHIBITS :

EXT.R(a): COPIES OF THE GO.(MS) NO.75/2004/SC/STDD DATED 30/10/2004.

EXT.R(b): COPIES OF THE GO(MS)NO.80/2004/SC/STDD DATED 9/11/2004.

//TRUE COPY//

P.S. TO JUDGE

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TRUE COPY
Ratnam G
Examiner