R E P O R T A B L E

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.37 OF 1992

ABHIRAM SINGH ...APPELLANT

VERSUS

C.D. COMMACHEN (DEAD) BY LRS. & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO.8339 OF 1995

NARAYAN SINGH ...APPELLANT

VERSUS

SUNDERLAL PATWA ...RESPONDENT

J U D G M E N T

T.S. THAKUR, CJI.

1. I have had the advantage of carefully reading the separate but conflicting opinions expressed by my esteemed brothers Madan B. Lokur and Dr. D.Y. Chandrachud, JJ. While both the views reflect in an abundant measure, the deep

understanding and scholarship of my noble brothers, each treading a path that is well traversed and sanctified by judicial pronouncements, the view taken by Lokur, J. appears to me to be more in tune with the purpose and intention behind the enactment of Section 123(3) of the Representation of Peoples Act, 1951. I would, therefore, concur with the conclusions drawn by Lokur, J. and the order proposed by His Lordship with a few lines of my own in support of the same.

2. The legislative history of Section 123(3) as it now forms part of the statute has been traced in the order proposed by brother Lokur, J. I can make no useful addition to that narrative which is both exhaustive and historically accurate. I may, perhaps pick up the threads post 1958 by which time amendments to the Representation of People Act, 1951 had brought Section 123(3) to read as under:-

> *"Section 123*
>
> *(1) xxxxxx*
>
> *(2) xxxxxx*
>
> *(3) The systematic appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting on the grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or national emblem, for the furtherance of the prospects of that candidate's election."*

3. A close and careful reading of the above would show that for an appeal to constitute a corrupt practice it had to satisfy the following ingredients:

> *(i) the appeal was made by the candidate, or his agent, or by any other person with the consent of the candidate or his election agent;*

(ii) the appeal was systematic;

(iii) the appeal so made was to vote or refrain from voting at an election on the ground of caste, race, community, or religion or the use of or appeal to religious symbols or the use of or appeal to national symbols such as national flag or the national emblem; and

(iv) the appeal was for the furtherance of the prospects of the candidate's election, by whom or whose behalf the appeal was made.

4. What is noteworthy is that Section 123(3) as it read before the amendment of 1961, did not make any reference to the "candidate's religion" or the "religion of his election agent" or the "person who was making the appeal with the consent of the candidate or his agent" or even of the 'voters' leave alone the "religion of the opponent" of any such candidate. All that was necessary to establish the commission of a corrupt practice was a systematic appeal by a candidate, his election agent or any other person with the consent of any one of the two, thereby implying that an appeal in the name of religion, race, caste, community or language or the use of symbols referred to in Section 123(3) was forbidden regardless of whose religion, race, caste, community or language was invoked by the person making the appeal. All that was necessary to prove was that the appeal was systematic and the same was made for the furtherance of the prospects of a candidate's election.

5. Then came the Bill for amendment of Section 123 of the Act introduced in the Lok Sabha on 10th August, 1961 which was aimed at widening the scope of corrupt practice and to provide for a new corrupt practice and a new electoral offence. The notes on clauses attached to the Bill indicated that the object behind the proposed amendment was (a) to curb communal and separatist tendencies in the country (b) to widen the scope of the corrupt practice mentioned in sub-section (3) of Section 123 of the Act and (c) to provide for a

new corrupt practice as in sub-clause (b) of clause 25. The proposed amendment was in the following words:

> *"25. In Section123 of the 1951 Act, -*
>
> *(a) in clause (3) –*
> *(i) the word "systematic" shall be omitted,*
> *(ii) for the words "caste, race, community or religion", the words "religion, race, caste, community or language" shall be substituted;*
> *(iii) (b) after clause (3), the following clause shall be inserted, namely: -*
>
> *"(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of that candidate's election."-*

6. The bill proposing the above amendment was referred to a Select Committee who re-drafted the same for it was of the view that the amendment as proposed did not clearly bring out its intention. The redrafted provision was with the minutes of dissent recorded by Ms. Renu Chakravartty and Mr. Balraj Madhok debated by the Parliament and enacted to read as under:

> *"(1) xxxxxxxxx*
>
> *(2) xxxxxxxxxx*
>
> *(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.*
>
> *(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of election of that candidate or for prejudicially affecting the election of any candidate.*

7. The single noteworthy change that was by the above amendment brought about in the law was the deletion of the word *"systematic"* as it appeared in Section 123 (3) before the amendment of 1961. The purpose underlying the proposed deletion obviously was to provide that an appeal in the name of religion after the amendment would constitute a corrupt practice even when the same was not systematic. In other words, a single appeal on the ground of religion, race, caste, community or language would in terms of the amended provision be sufficient to annul an election. The other notable change which the amendment brought about was the addition of the words *"or for prejudicially affecting the election of any candidate"* in Section 123 (3) which words were not there in the earlier provision.

8. That the purpose underlying the amendment was to enlarge the scope of corrupt practice was not disputed by learned counsel for the parties before us. That the removal of the word *"systematic"* and the addition of the words "*prejudicially affecting the election of any candidate"* achieved that purpose was also not disputed. What was all the same strenuously argued by Mr. Shyam Diwan was that even when the purpose of the amendment was to widen the scope of the corrupt practice under Section 123 (3) it had also restricted the same by using the word *"his"* before the word *"religion"* in the amended provision. According to Mr. Diwan the amendment in one sense served to widen but in another sense restrict the scope of corrupt practice.

9. I have found it difficult to accept that submission. In my view the unamended provision extracted earlier made any appeal in the name of religion, race, caste, community or language a corrupt practice regardless of whose

religion, race, caste, community or language was involved for such an appeal. The only other requirement was that such an appeal was made in a systematic manner for the furtherance of the prospects of a candidate. Now, if that was the legal position before the amendment and if the Parliament intended to enlarge the scope of the corrupt practice as indeed it did, the question of the scope being widened and restricted at the same time did not arise. There is nothing to suggest either in the statement of objects and reasons or contemporaneous record of proceedings including notes accompanying the bill to show that the amendment was contrary to the earlier position intended to permit appeals in the name of religion, race, caste, community or language to be made except those made in the name of the religion, race, caste, community or language of the candidate for the furtherance of whose prospects such appeals were made. Any such interpretation will not only do violence to the provisions of Section 123(3) but also go against the avowed purpose of the amendment. Any such interpretation will artificially restrict the scope of corrupt practice for it will make permissible what was clearly impermissible under the unamended provision. The correct approach, in my opinion, is to ask whether appeals in the name of religion, race, caste, community or language which were forbidden under the unamended law were actually meant to be made permissible subject only to the condition that any such appeal was not founded on the religion, race, caste, community or language of the candidate for whose benefit the same was made. The answer to that question has to be in the negative. The law as it stood before the amendment did not permit an appeal in the name of religion, race, caste community or language, no matter whose religion, race, community or language was invoked. The amendment did not intend to relax or remove that restriction. On the contrary it intended to widen the scope of the corrupt practice by making

even a 'single such appeal' a corrupt practice which was not so under the unamended provision. Seen both textually and contextually the argument that the term *"his religion"* appearing in the amended provision must be interpreted so as to confine the same to appeals in the name of "religion of the candidate" concerned alone does not stand closer scrutiny and must be rejected.

10. There is another angle from which the question of interpretation of Section 123(3) can be approached. Assuming that Section 123(3), as it appears, in the Statute Book is capable of two possible interpretations one suggesting that a corrupt practice will be committed only if the appeal is in the name of the candidate's religion, race, community or language and the other suggesting that regardless of whose religion, race, community or language is invoked an appeal in the name of any one of those would vitiate the election. The question is which one of the two interpretations ought to be preferred by the Court keeping in view the constitutional ethos and the secular character of our polity.

11. That India is a secular state is no longer res integra. Secularism has been declared by this Court to be one of the basic features of the Constitution. A long line of decisions delivered by this Court on the subject have explained the meaning of the term 'secular' and 'secularism', but before we refer to the judicial pronouncements on the subject we may gainfully refer to what Dr. Radhakrishnan the noted statesman/philosopher had to say about India being a secular State in the following passage:

> "*When India is said to be a secular State, it does not mean that we reject reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that Secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition, the Indian State will not identify itself with or be controlled by any particular religion. We hold that no one*

> *religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and government.* ***This view of religious impartiality, of comprehension and forbearance****, has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges, which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all like should be free to share to the fullest degree in the common life.* ***This is the basic principle involved in the separation of Church and State."***
>
> [emphasis supplied]

12. Dr. B.R. Ambedkar also explained the significance of 'secular state' in the Parliamentary debate in the following words:

> *"A secular state does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this* ***parliament shall not be competent to impose any particular religion upon the rest of the people"***

13. In ***Saifuddin Saheb v. State of Bombay*** **AIR 1962 SC 853** a Constitution bench of this Court described secularism thus :-

> **"50.** *These Articles embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history, the instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasize the secular nature of the Indian democracy which the founding fathers considered should be the very basis of the Constitution."*

14. Again in ***the Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.*** **(1974)1 SCC 717** a Nine-Judge bench explained the secular character of the Indian Constitution and said:

> *"75. …….. There is no mysticism in the secular character of*

> *the State. Secularism is neither anti-God nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion."*

15. So also in ***Indira Nehru Gandhi v. Shri Raj Narain*** **(1975) Suppl. SCC 1** it was observed::

> *"664.. …….. The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."*

16. In ***S.R. Bommai v. Union of India*** **1994 (3) SCC 1**, Sawant J. speaking for himself and Kuldeep Singh J. in para 145 of the judgment elaborately referred to several provisions of the Constitution including Articles 25, 26, 29, 30, 44 and 51A and declared that these provisions prohibit the State from identifying with any particular religion, sect or denomination. Drawing support from what jurists have said about the concept of secularism in the Indian Constitution, the Court explained the legal position thus:

> **"148.***One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we have made reference above. The State's tolerance of religion or religions does not make it either a religious or a theocratic State. When the State allows citizens to practise and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State*. ***This is also clear from Sub-section [3] of Section 123 of the Representation of the***

> ***Peoples Act, 1951 which prohibits an appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of or appeal to religious symbols. Sub-section [3A] of the same section prohibits the*** *promotion or attempt to promote feelings of enmity and hatred between different classes of the citizens of India on the grounds of religion, race, caste community or language by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. A breach of the provisions of the said Sub-sections [3] and [3A] are deemed to be corrupt practices within the meaning ofthe said section."*
>
> (Emphasis supplied)

17. The Court declared that whatever be the States attitude towards religious sects and denominations, a religious activity cannot be allowed to mix with the secular activities of the State. The Court held that encroachment of religious activities in the secular activities of the State was prohibited as is evident from the provisions of the Constitution themselves. The Court observed:

> ***"148.One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited.*** *This is evident from the provisions of the Constitution to which we have made reference above."*
>
> (Emphasis Supplied)

18. The Court drew a distinction between freedom and tolerance of religion on the one hand and the secular life of the State on the other and declared that the later falls in the exclusive domain of the State.

19. Speaking for himself and Agarwal J., Jeevan Reddy J., held that the Constitution does not recognize or permit mixing religion and State power and that the two must be kept apart. The Court said:

> "310.....*If the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well. The Constitution does not recognise, it does not permit, mixing religion and State power. Both must be kept apart. That is the constitutional injunction. None can say otherwise so long as this Constitution governs this country. Introducing religion into politics is to introduce an impermissible element into body politic and an imbalance in our constitutional system. If a political party espousing a particular religion comes to power, that religion tends to become, in practice, the official religion. All other religions come to acquire a secondary status, at any rate, a less favourable position. This would be plainly antithetical to Articles 14 to 16, 25 and the entire constitutional scheme adumbrated hereinabove. Under our Constitution, no party or Organisation can simultaneously be a political and a religious party.*"

20. Relying upon the pronouncement of *SR Bommai* (supra) this Court in ***M.P. Gopalakrishnan Nair and Anr. v. State of Kerala and Ors.*** **(2005) 11 SCC 45** declared that the judicial process must promote citizen's participation in the electoral process free from any corrupt practice in the exercise of their adult franchise. The Court held that rise of fundamentalism and communalism of politics encouraged the separatist and divisive forces and become breeding grounds for national disintegration and failure of the parliamentary democratic system.

21. In ***Dr. Vimal (Mrs.) v. Bhaguji & Ors.*** **(1996) 9 SCC 351** this Court emphasized the need for interpreting Section 123(3) and 123(3A) of the Representation of Peoples Act, 1951 to maintain national integrity and unity amongst the citizens of the country and maintaining the secular character of the

society to which we belong. The Court said:

> **"20.***We may also indicate here that in order to maintain national integrity and amity amongst the citizens of the country and to maintain the secular character of the pluralistic society to which we belong section 123 and 123 (3A) of the Representation Act have been incorporated. For maintaining purity in the election process and for maintaining peace and harmony in the social fabric, it becomes essentially necessary not only to indict the party to an election guilty of corrupt practice but to name the collaborators of such corrupt practice if there be any".*

22. In ***Ambika Sharan Singh Vs. Mahant Mahadeva and Giri and Others*** **(1969) 3 SCC 492,** the Court held:

> *"12. Indian leadership has long condemned electoral campaigns on the lines of caste and community as being destructive of the country's integration and the concept of secular democracy which is the basis of our Constitution. It is this condemnation which is reflected in Section 123 (3) of the Act. Inspite of the repeated condemnation, experience has shown that where there is such a constituency it has been unfortunately too tempting for a candidate to resist appealing to sectional elements to cast their votes on caste basis."*

23. The upshot of the above discussion clearly is that under the constitutional scheme mixing religion with State power is not permissible while freedom to practice profess and propagate religion of one's choice is guaranteed. The State being secular in character will not identify itself with any one of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature. The elections to the State legislature or to the Parliament or for that matter or any other body in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice. Suffice

it to say that the Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State. This necessarily implies that interpretation of any statute must not offend the fundamental mandate under the Constitution. An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. This Court has in several pronouncements ruled that while interpreting an enactment, the Courts should remain cognizant of the Constitutional goals and the purpose of the Act and interpret the provisions accordingly.

24. In ***Kedar Nath Vs. State of Bihar*** **(AIR 1962 SC 955),** a Constitution bench of this Court declared that while interpreting an enactment, the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to address. More importantly, the Court observed:

> *"26. It is well-settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction"*

25. Extending the above principle further one can say that if two constructions of a statute were possible, one that promotes the constitutional objective ought to be preferred over the other that does not do so.

26. To somewhat similar effect is the decision of this Court in ***State of Karnataka Vs. Appa Balu Ingale and Others*** **[1995] Supp.4 SCC 469** where this Court held that as the vehicle of transforming the nation's life, the

Court should respond to the nation's need and interpret the law with pragmatism to further public welfare and to make the constitutional animations a reality. The Court held that Judge's should be cognizant of the constitutional goals and remind themselves of the purpose of the Act while interpreting any legislation, the Court said:

> ***"35.*** *The judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs; make meaningful the right to life and give effect to the Constitution and the will of the legislature. This Court as the vehicle of transforming the nation's life should respond to the nation's needs and interpret the law with pragmatism to further public welfare to make the constitutional animations a reality. Common sense has always served in the court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which is sine qua non for stability in the process of change in a parliamentary democracy. In interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality; give social integration a fruition and make fraternity a reality."*

27. In ***Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Ltd. and Ors.*** **(2015) 8 SCC 1,** this Court held that in cases where the legislation or bye-laws are silent in a given aspect, the Court will have to read the constitutional requirements into the enactment. The Court said:

> *"46. In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts."*

28. There is thus ample authority for the proposition that while interpreting a legislative provision, the Courts must remain alive to the constitutional provisions and ethos and that interpretations that are in tune with such provisions and ethos ought to be preferred over others. Applying that principle to the case at hand, an interpretation that will have the effect of removing the religion or religious considerations from the secular character of the State or state activity ought to be preferred over an interpretation which may allow such considerations to enter, effect or influence such activities. Electoral processes are doubtless secular activities of the State. Religion can have no place in such activities for religion is a matter personal to the individual with which neither the State nor any other individual has anything to do. The relationship between man and God and the means which humans adopt to connect with the almighty are matters of individual preferences and choices. The State is under an obligation to allow complete freedom for practicing, professing and propagating religious faith to which a citizen belongs in terms of Article 25 of the Constitution of India but the freedom so guaranteed has nothing to do with secular activities which the State undertakes. The State can and indeed has in terms of Section 123(3) forbidden interference of religions and religious beliefs with secular activity of elections to legislative bodies. To sum up:

29. An appeal in the name of religion, race, caste, community or language is impermissible under the Representation of the People Act, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate’s religion or the religion of the election agent or that of the opponent or that of the voter’s. The sum total of Section 123 (3) even after amendment is

that an appeal in the name of religion, race, caste, community or language is forbidden even when the appeal may not be in the name of the religion, race, caste, community or language of the candidate for whom it has been made. So interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice. With these few lines I answer the reference in terms of the order proposed by Lokur, J.

.....CJI.
(T.S. THAKUR)

New Delhi
January 2, 2017