

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No. 8339 of 1995@@  
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Narayan Singh ...Appellant(s)  
Versus

Sunderlal Patwa ...Respondent(s)

(With office report)

Date : 20.08.2002 This appeal was called on for hearing today.@@  
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CORAM :

- HON'BLE MR. JUSTICE G.B. PATTANAIAK@@  
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- HON'BLE MR. JUSTICE M.B. SHAH@@  
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- HON'BLE MR. JUSTICE DORAISWAMY RAJU@@  
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- HON'BLE MR. JUSTICE S.N. VARIAVA@@  
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- HON'BLE MR. JUSTICE D.M. DHARMADHIKARI@@  
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For Appellant (s) Mr. Anoop G. Chaudhary, Sr.Adv.  
Mrs. June Chaudhari, Adv.  
Ms. Sumeeta Chaudhari, Adv  
Mr. M.S. Dahiya, Adv.

For Respondent (s) Mr. S.V. Deshpande, Adv.

UPON hearing counsel the Court made the following  
O R D E R

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.SP2

Mr. Chaudhary, the learned senior counsel appearing in support of the appeal, resumed his arguments at 10.30 a.m. and concluded at 12.45 p.m. Then, Mr. Deshpande addressed the Court for a few minutes when the Court dictated the order.

In this appeal the interpretation of Sub-section (3) of Section 123 of the Representation of People Act, 1951, ..2/-

(hereinafter referred to as "the Act") as amended by Act 40/61, has come up for consideration. This case had been tagged on to another case in the case of *Abhiram Singh v CD.* @@@@  
 Commachen & Ors. [1996(3) SCC 665]. The *Abhiram Singh's* @@@@  
 case has been disposed of as being infructuous. The High Court in the present case has construed the provision of sub-section (3) of Section 123 of the Act to mean that it will not be a corrupt practice when the voters belonging to some other religion are appealed, other than the religion of the candidate. This construction gains support from a three-Judge Bench decision of this Court in *Kanti Prasad* @@@@  
*Jayshanker Yagnik v Purshottamdas Ranchhoddas Patel & Ors* @@@@  
 [1969(1) SCC 455] as well as the subsequent decision of this Court in *Ramesh Yeshwant Prabhoo v Prabhakar Kashinath Kunte* @@@@  
 [1991) SCC 130]. In the later decision the speech of the Law Minister has been copiously referred to for giving the provision a restrictive construction in the sense that the word "his" has been purposely used and, therefore, so long as the candidate's religion is not taken recourse to, it would not be a "corrupt practice" within the meaning of Section 123(3). There are certain observations in the Constitution Bench decision of this Court in the case of *Kultar Singh v.* @@@@  
*Mukhtiar Singh* [1964(7) SCR 790] while noticing the @@@@  
 provisions of Section 23(3) of the Act. There are certain observations in *Bomma's* case, where this provision did not directly come up for consideration, which run contrary to the aforesaid three-Judge Bench decisions of this Court. The  
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very object of amendment in introducing Act 40/61 was for curbing the communal and separatist tendency in the country and to widen the scope of corrupt practice mentioned in clause (3) of Section 123 of the Act.

As it appears, under the amended provision, the words "systematic appeal" in the pre-amended provision was given a go-by and necessarily therefore the scope has been widened but by introducing the word "his" and the interpretation given to the aforesaid provision in the judgments referred earlier, would give it a restrictive meaning. In other words, while under the pre-amended provision it would be a corrupt practice, if appealed by candidate, or his agent or any other person to vote or refrain from voting on the grounds of cast, race, community or religion, it would not be so under the amended provision so long as the candidate does not appeal to the voters on the ground of his religion even @@@@  
 though he appealed to the voters on the ground of religion of voters. In view of certain observations made in the Constitution Bench decision of this Court in *Kultar Singh's* @@@@  
 case (supra), we think it appropriate to refer the matter to @@@@  
 a larger Bench of 7 Judges to consider the matter. The

matter be placed before Hon'ble the Chief Justice for  
constitution of the Bench.

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(J.S. Rawat)

(Suneet Bala Sharma)@@

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Court Master

Assistant Registrar@@

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