

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 56/LET/FUNC/PP/PPS-II/2017

Dated: 24th Jan, 2017

To

The Chief Electoral Officers of
All States and Union Territories.

Sub: Judgement dated 02-01-17 of the Hon'ble Supreme Court in C A Nos 37 of 1992 and C A No. 8339 of 1995 (Abhiram Singh Vs C D Commachen & ors)- Seeking votes in the name of religion, caste, etc.

Sir/Madam,

Attention is invited to the judgement pronounced on 02-01-17 by the Constitution Bench of Seven Judges of the Hon'ble Supreme Court in C A Nos 37 of 1992 and CA No. 8339 of 1995 (Abhiram Singh Vs C D Commachen & Ors), on the issue of use of religion, caste, etc. in election campaign. By the majority judgement, the Apex Court has held that any appeal to vote or to refrain from voting for a candidate on the ground of religion, caste, race, community or language of the candidate, election agent, any person making the appeal with the consent of the candidate or on the ground of the religion, caste etc. of the electors would amount to corrupt practice.

2. The relevant extracts from the judgment are quoted below for the information and reference of your party:-

"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.

20/1/17
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DYED (PS)

S.O. (D)

To All

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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: [Emphasis supplied]

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."

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"49. On a consideration of the entire material placed before us by learned counsels, we record our conclusions as follows:

- (1) The provisions of sub-section (3) of Section 123 of the Representation of the People Act, 1951 are required to be read and appreciated in the context of simultaneous and contemporaneous amendments inserting sub-section (3A) in Section 123 of the Act and inserting Section 153A in the Indian Penal Code.

- (2) So read together, and for maintaining the purity of the electoral process and not vitiating it, sub-section (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation thereby bringing within the sweep of a corrupt practice any appeal made to an elector 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 the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector.
3. The Commission has separately instructed all recognized National and State political parties that they shall take due note of the directions in the judgment for strict compliance. They have been asked to suitably brief and inform their lower formations and party cadres and all their candidates about the ruling of the Supreme Court and ask them to desist from any activities that would amount to soliciting votes in the name of religion, caste, etc. in any manner.
4. The Chief Electoral Officers are requested to take note of this judgment for guidance and reference. Any activity of seeking votes in the name of religion, caste etc. by or on behalf of any candidate or political party would now amount to violation of the provisions of sub-paras (3) and (4) of Part-I of the Model Code of Conduct. This letter may be communicated to all DEOs and ROs, and also may be brought to the notice of election observers at the time of elections. This may also be communicated to all political parties based in the State/UT including the registered un-recognized parties.
5. Please acknowledge receipt of this letter.

Yours faithfully,



(K.F. WILFRED)
PRINCIPAL SECRETARY