

REPORTABLE

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 ... Respondents

JUDGMENT

S. A. BOBDE, J.

I agree with the conclusion drawn by my learned brother Lokur, J. that the bar under Section 123 (3) of the Representation of People Act, 1951 (hereinafter referred to as "the Act") to making an appeal on the ground of religion must not be confined to the religion of the candidate because of the word 'his' in that provision. I also agree that the purposive interpretation in the social context

adjudication as a facet of purposive interpretation warrants a broad interpretation of that section. That the section is intended to serve the broad purpose of checking appeals to religion, race, caste, community or language by any candidate. That to maintain the sanctity of the democratic process and to avoid the vitiating of secular atmosphere of democratic life an appeal to any of the factors should avoid the election of the candidate making such an appeal.

2. I would, however, add that such a construction is not only warranted upon the application of the purposive test of interpretation but also on textual interpretation. A literal interpretation does not exclude a purposive interpretation of the provisions whether in relation to a taxing statute or a penal statute.

In **IRC v. Trustees of Sir John Aird's Settlement** [1984 CH 382 : (1983) 3 All ER 481 (CA)], the Court observed as follows:

"... Two methods of statutory interpretation have at times been adopted by the court. One, sometimes called literalist, is to make a meticulous examination of the precise words used. The other sometimes called purposive, is to consider the object of the relevant provision in the light of the other provisions of the Act — the general intendment of the provisions. They are not mutually exclusive and both have their part to play even in the interpretation of a taxing statute."

There seems no valid reason while construing a statute (be it a taxing or penal statute) why both rules of interpretation cannot be applied.

3. Sub-section (3) of Section 123 of the Act reads as follows:

"123 (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:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause".

The provision prohibits an "appeal by a candidate", etc. "to vote or refrain from voting for any person on the ground of his religion", etc. The word "his" occurring in the section refers not only to the candidate or his agent but is also intended to refer to the voter i.e. the elector. What is prohibited by a candidate is an appeal to vote on certain grounds. The word "his" therefore must necessarily be taken to embrace the entire transaction of the appeal to vote made to voters and must be held referable to all the actors involved i.e. the candidate, his election agent etc. and the voter.

Thus, the pronoun in the singular "his" refers to a candidate or his agent or any other person with the consent of a candidate or his election agent and to the voter. In other words, what is prohibited is an appeal by a candidate etc. to a voter for voting on the ground of his religion i.e. those categories preceding "his". This construction is fortified by the purposive test.

4. It is settled law that while interpreting statutes, wherever the language is clear, the intention of the legislature must be gathered from the language used and support from extraneous sources should be avoided. I am of the view that the language that is used in Section 123 (3) of the Act intends to include the voter and the pronoun "his" refers to the voter in addition to the candidate, his election agent etc. Also because the intendment and the purpose of the statute is to prevent an appeal to votes on the ground of religion. I consider it an unreasonable shrinkage to hold that only an appeal referring to the religion of the candidate who made the appeal is prohibited and not an appeal which refers to religion of the voter. It is quite conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers to religion of the voter. For example, where a candidate or his election agent, appeals to a voter highlighting that the opposing candidate does not belong to a particular religion, or

caste or does not speak a language, thus emphasizing the distinction between the audience's (intended voters) religion, caste or language, without referring to the candidate on whose behalf the appeal is made, and who may conform to the audience's religion, caste or speak their language, the provision is attracted. The interpretation that I suggest therefore, is wholesome and leaves no scope for any sectarian caste or language based appeal and is best suited to bring out the intendment of the provision. There is no doubt that the section on textual and contextual interpretation proscribes a reference to either.

5. This Court in **Grasim Industries v. Collector of Customs, Bombay** [2002 (4) SCC 297] observed as follows:-

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered

from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Union of India v. Deoki Nandan Aggarwal, Institute of Chartered Accountants of India v. Price Waterhouse and Harbhajan Singh v. Press Council of India)"

It seems clear that the *mens* or *sententia legis* of the Parliament in using the pronoun "his" was to prohibit an appeal made on the ground of the voter's religion. It was argued before us that a penal statute must be strictly construed so as not to widen the scope and create offences which are not intended by the legislature. This submission is well-founded. However, it has no application where the action is clearly within the mischief of the provision. Parliamentary intent therefore, was to clearly proscribe appeals based on sectarian, linguistic or caste considerations; to infuse a modicum of oneness, transcending such barriers and to borrow Tagore's phrase transcend the fragmented "*narrow domestic walls*" and send out the message that regardless of these

distinctions voters were free to choose the candidate best suited to represent them.

6. The correct question is not whether a construction which is strict or one which is more free should be adopted but – what is the true construction of the statute. A passage in Craies on Statute Law, 7th Edn. at Page No.531 reads as follows:-

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. "All modern Acts are framed with regard to equitable as well as legal principles" [Edwards vs. Edwards : (1876) 2 Ch. D. 291, 297, Mellish L. J., quoted with approval by Lord Cozens – Hardy M.R. in Re. Monolithic Building Co Ltd. (1915) 1 Ch. 643, 665]. "A hundred years ago", said the Court in Lyons case [(1958) Bell C.C. 38, 45], "statutes were required to be perfectly precise, and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

7. It is an overriding duty of the Court while interpreting the provision of a statute that the intention of the legislature is not frustrated and any doubt or ambiguity must be resolved by recourse to the rules of purposive construction. In **Balram Kumawat v. Union of India** [2003 (7) SCC 628], this Court observed as follows:-

"26. *The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See Salmon v. Duncombe (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. [See BBC Enterprises v. Hi-Tech Xtravision Ltd.(All ER at pp. 122-23).]"*

Further, this Court observed as follows:-

"36. *These decisions are authorities for the proposition that the rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of Parliament to combat crimes of special nature would be defeated."*

8. Applying the above principles, there is no doubt that Parliament intended an appeal for votes on the ground of religion is not permissible whether the appeal is made on the ground of the religion of the candidate etc. or of the voter. Accordingly, the words "his religion" must be construed as referring to all the categories of persons preceding these words.

.....].
[**S.A. BOBDE**]

NEW DELHI,
JANUARY 2, 2017