

ITEM NO.101

COURT NO.9

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.37/1992

ABHIRAM SINGH

Appellant(s)

VERSUS

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

Respondent(s)

(IA No. 63203/2017 – CLARIFICATION/DIRECTION & IA No. 124783/2017 – INTERVENTION APPLICATION)

Date : 03-05-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s)

Mr. Arvind P Dattar, Sr. Adv.
Ms. Sheena Taqui, Adv.
Ms. Akansha Saini, Adv.
Mrs. Bina Gupta, AOR

For Respondent(s)

Mr. Devadutt Kamat, Sr. Adv.
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Mr. Chirag M. Shroff, AOR
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Mr. Rishabh Shivhare, Adv.

Mr. Shuvodeep Roy, AOR
Mr. Sai Shashank, Adv.
Mr. Deepayan Dutta, Adv.

Mr. Shrirang B. Varma, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

Mr. D.V. Singh, Adv.
Mr. Ajay Kumar Singh, AOR
Mr. Anubhav Bhandari, Adv.
Mr. Vishal Kumar Singh, Adv.
Mr. Shanti Swaroop singh, Adv.
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Ms. Radhika Dhabolkar, Adv.
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Mr. S.K. Rajora, Adv.
Mr. Akhieshwar Jha, Adv.
Mr. Amit Kumar Chawla, Adv.
Mr. Ravish Kumar Goyal, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Ms. Hemantika Wahi, AOR
Mr. Prakash Kumar Singh, AOR
Mrs. Swarupama Chaturvedi, AOR
Ms. Aparna Bhat, AOR
Ms. Archana Pathak Dave, AOR
Mr. Merusagar Samantaray, AOR

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

1. This Civil Appeal emanates out of election to Santacruz Legislative Assembly Seat held in 1990 for the Maharashtra State Legislative Assembly. The appellant was declared elected on 01-03-1990, whereas Respondent No.1 (since deceased) secured the second largest number of votes.
2. Respondent No.1 filed an election petition before the High Court of Judicature at Bombay which was allowed vide Judgment dated 24-12-1991.
3. The appellant challenged the High Court's Judgment through the instant appeal, which came up for hearing before a three-Judge Bench on 16-04-1996. The Bench formulated the following three questions that arose for determination in Para 5 of its order dated 16-04-1996 (Reported in (1996) 3 SCC 665):-

"Prima facie, the following three questions which are interwoven, arise for decision in the case:

[i] whether the learned Judge who tried the case is required to record prima facie conclusions on proof of the corrupt practices committed by the returned candidate or

his agents or collaborators [leaders of the political party under whose banner the returned candidate contested the election] or any other person on his behalf?

[ii] whether the consent of the returned candidate is required to be proved and if so, on what basis and under what circumstances the consent is held proved?

[iii] on reaching the conclusion that consent is proved and prima facie corrupt practices are proved, whether the notice under Section 99(1), proviso (a) should contain, like a mini judgment, extraction of pleadings of corrupt practices under Section 123, the evidence - oral and documentary and findings on each of the corrupt practices by each of the collaborators, if there are more than one, and supply them to all of them for giving an opportunity to be complied with?

4. The three-Judge Bench then proceeded to refer the matter to a larger bench of five Judges, as may be seen from the following paragraphs:-

"12. As stated earlier, when and under what circumstances, speeches of the leaders of the political party or the appeal of any other person with the consent by a candidate or his election agent to vote or refrain from voting on the ground of religion, race, caste or community or language, etc. or promotion or an attempt to promote feelings of enmity or hatred between different classes of citizens of India on the ground of religion, race, caste, community or language with the consent of the candidate or his election agent for the furtherance of the prospects of the election of the candidate or prejudicially affect the election of any candidate constitutes corrupt practice under subsections[3] or [3A] of Section 123. Its content and scope also require to be clearly laid down authoritatively lest miscarriage of justice in interpretation of "corrupt

practice" involved in every election petition would ensue. The purity of election process gets fouled (sic becomes) and be fraught with deleterious effect in a democratic polity.

13. Thus, without expressing any opinion on these questions, we are of the view that the entire case requires to be heard and decided by a large Bench of five Judges since the decision thereon impinges upon the purity of election process and requires to be decided authoritatively.

14. We, therefore, direct the Registry to place the case before our learned brother, the Chief Justice for constituting a larger Bench of five Judges, and, if possible, at an early date so that all the questions arising in the present appeal could be decided authoritatively and expeditiously."

[Emphasis applied]

5. Consequently, the instant Civil Appeal was placed before a five-Judge bench on 30-01-2014 when the following order was passed (Reported in (2014) 14 SCC 382):-

"2. In the course of arguments, our attention has been invited to the order of this Court dated 20-8-2002 in Narayan Singh v. Sunderlal Patwa (2003) 9 SCC 300. By this order, a Constitution Bench of five Judges has referred the question regarding the scope of corrupt practice mentioned in sub-section (3) of Section 123 of the 1951 Act to a larger Bench of seven Judges. This became necessary in view of the earlier decision of a Constitution Bench of this Court in Kultar Singh v. Mukhtiar Singh (AIR 1965 SC 141).

3. Incidentally, we may notice that Narayan Singh appeal was tagged with the present appeal and when that appeal (Narayan Singh) came up for hearing, the Court noted that

Abhiram Singh v. C.D. Commachen (1996) 3 SCC 665 (present appeal) had already been disposed of as being infructuous. Obviously, the Court was not correctly informed as the present appeal had not become infructuous and was pending.

4. Be that as it may, since one the questions involved in the present appeal is already referred to a larger Bench of seven Judges, we think it appropriate to refer this appeal to a limited extent regarding interpretation of sub-section (3) of Section 123 of the 1951 Act to a larger Bench of seven Judges."

6. The matter was thus eventually put up before a seven-Judge Bench and was decided on 02-01-2017 through a majority opinion, (Reported in (2017) 2 SCC 629).

7. After answering the questions of law, the seven-Judge Bench directed that the appeal be now listed for hearing before a regular Bench to be constituted by Hon'ble the Chief Justice of India. The order reads as follows:-

"The reference is answered in the light of the majority opinion. The appeals shall now be listed for hearing before the regular Bench to be constituted by Hon'ble the Chief Justice of India. The Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate orders."

8. The Registry has now listed this appeal before two-Judge Bench.

9. It appears to us that in view of three-Judge Bench order dated 16-04-1996, the matter stands referred to a larger Bench of five-Judge and hence the questions of law formulated in Para 5 of the order reported in (1996) 3 SCC 665, are required to be considered by a larger Bench of five Judges.

10. We, therefore, direct the Registry to place the case before Hon'ble the Chief Justice of India for constituting a larger Bench

of five Judges.

11. We are informed that Respondent No.1 – election petitioner has already passed away. The appellant is also more than 80 years old. The Civil Appeal is of the year 1992, we, therefore, request Hon'ble the Chief Justice of India to constitute the Bench at the earliest.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(PREETHI T.C.)
COURT MASTER (NSH)