

Supreme Court of India

Dr. Das Rao Deshmukh vs Kamal Kishore Nanasaheb Kadam And ... on 14 July, 1995

Equivalent citations: AIR 1996 SC 391, JT 1995 (5) SC 313, 1995 (4) SCALE 424, (1995) 5 SCC 123, 1995 Supp 2 SCR 148

Author: G Ray

Bench: G Ray, F Uddin

ORDER G.N. Ray, J.

1. This appeal is directed against the judgment dated July 18, 1991 passed by the Bombay High Court (Aurangabad Bench) in Election Petition No. 8 of 1991. The respondent No. 1 in this appeal, Sri Kamal Kishore Nanasaheb Kadam preferred Election Petition No. 8 of 1991 before the Aurangabad Bench of the Bombay High Court inter alia challenging the election of the appellant Dr. Das Rao Deshmukh from Assembly Constituency No. 170 Nanded in the Maharashtra Legislative Assembly held on February 27, 1990. Having secured the highest vote in the said election, the appellant was declared elected to the Maharashtra State Legislative Assembly in the said election from the Nanded Assembly Constituency. By the impugned judgment, such election of the appellant was declared null and void on the ground of corrupt practice indulged by the appellant Dr. Das Rao Deshmukh under Section 123(3) and 123(3A) of the Representation of People Act, 1951 (hereinafter referred to as the Representation Act). The High Court, by the impugned judgment, also awarded a cost of Rs. 10,000 against the appellant and in favour of the election petitioner. It may be indicated here that shortly after the hearing of this appeal was concluded, the general election of the Maharashtra State Legislative Assembly including the Nanded Assembly Constituency was held in February, 1995. In view of such election, the contest as to general election in 1990 would have lost, for all practical purposes, any importance and this appeal would have become infructuous. But in view of the finding of the High Court that the appellant had indulged in corrupt practice under Section 123(3) and 123(3A) of the Representation Act which has serious consequence concerning the appellant, a decision of this appeal on merit is necessary.

2. In the election petition preferred by Sri Kamal Kishore Nanasaheb Kadam, the election petitioner alleged that the appellant Dr. Das Rao Deshmukh was a nominee of Shiv Sena party in the said Nanded Constituency but he carried out his election campaign on the basis of Hindu Religion and for that purpose promoted and attempted to promote communal hatred between two communities namely the Hindu and the Muslims. The election petitioner gave detailed accounts as to how such campaign on the ground of religion was carried out by the appellant Dr. Das Rao Deshmukh with the active support of his election agents and leaders of Shiv Sena and Bharatiya Janta Party (hereinafter referred to as BJP). The last Assembly election in the State of Maharashtra was held on February 27, 1990. As per the schedule declared by the Election Commission for the 9th General Election for the Legislative Assembly for the State of Maharashtra, the nomination papers were to be filed on February 3, 1990, nominations were to be scrutinised on the very same day. Last date for withdrawal of nomination papers was February 7, 1990 and the result of election was to be declared on March 2, 1990. The election petitioner was the Congress (I) nominee and the appellant Dr. Deshmukh was the nominee of Shiv Sena party. The appellant secured 48465 votes and election petitioner secured 33270 votes. Chandrakant Bagve and Vinayak Partharkar respectively Shakra Pramukh of Shiv Sena and Local President of the said Shakra were incharge of the election

campaign on behalf of Dr. Deshmukh. Shri Chander Shekhar Sonavane was the election agent of Dr. Deshmukh. The election petitioner alleged that the Shiv Sena Party conducted election campaign by holding public meetings, distributing banners and hand bills pamphlets, playing audio and video cassettes, depicting the election manifesto as well as the election campaign of Shiv Sena. It was alleged that Shiv Sena party had recorded two cassettes namely 'Avhan and Awanan' and 'Ajinkya'. It was alleged that all such campaigns were with the consent of Dr. Deshmukh. The election petitioner divided the allegations in Part II to Part VII of the election petition. The allegations about the campaign on the basis of religion were indicated in Part V and Part VI. Part VI is the synopsis of the particulars of the campaign which, according to the election petitioner, were offensive. The classification in those parts has been made with reference to various types of document, cassettes, both audio and video for facilitating the understanding of the allegations of the election petitioner. The organisation of the Shiv Sena party was registered as political party on October 29, 1988. According to the election petitioner, the main idea of establishing the Shiv Sena party was to promote and espouse the cause of Hinduism. The election petitioner alleged that the Shiv Sena came out with the message in a daily newspaper called "Samna" and the thrust of the said newspaper was that the Hindus and the Hindu religion were to danger and that they needed awakening. The election petitioner further alleged that in Nanded constituency the said newspaper had wide circulation. The main allegation of the said Shiv Sena party was that Hindu religion was in peril in the hands of the ruling Congress (I) party. It was alleged that during the entire tenure of the rule by the Congress I, the said party had espoused the cause of Mohammadens and Christians and it was required to be checked by constituting 'Hindu Vote Bank'. The 'Supremo of Shiv Sena party Shri Balasaheb Thackrey had openly canvassed for capturing political power by indicating that such power had to be owned by 'Dharmayudh'. It was alleged that when the election of Shiv Sena candidate Dr. Ramesh Prabhoo from the Vile Parle Constituency on December 13, 1987 was set aside on the ground that the campaign was found to be in breach of Section 123(3) and 123(3A) of the Representation Act, Shri Thackrey came out in the newspaper 'Samna' that Hindus must unite. Hindu religion must grow and this concept should make new Hindustan. Similar speeches were also delivered thereafter. It was further alleged that on the eye of election of four Shiv Sena candidates at the 9th Lok Sabha Elections, the same message was delivered by Shri Thackrey and he declared that he would desire to hoist Saffron Flag at Vidhan Bhavan at Bombay. The election petitioner contended that the appellant Dr. Deshmukh joined Shiv Sena and adopted the entire election campaign carried out by Shiv Sena throughout the State of Maharashtra. The said Shri Deshmukh also consented that persons named in para 3.02 of the election petition would campaign for him. The said list mentioned several names including the names of respondent Nos. 2 to 6 to the election petition. In Part IV, the election petitioners gave the area of Nanded Constituency No. 170 and in para 5, the detailed corrupt practice was indicated. It was alleged by the election petitioner that on February 2, 1990, there was an announcement by the Nanded Shakh of Shiv Sena party that the meeting would be addressed by Shri Balasaheb Thackrey on February 4, 1990 at about 1.30 p.m. and an advertisement was published in local newspaper 'Godatir Samachar'. It was indicated that the meeting would be held at Indira Gandhi Maidan where Dr. Deshmukh would remain present. At the said meeting, Dr. Deshmukh was given a welcome by Shri Thackrey and Shri Thackrey delivered a lengthy speech in the meeting. Shri Ashok Deshmukh, Nandu Kulkarni and Chandrakant Bagve also addressed the same meeting. The report of such meeting and the speeches delivered therein were published in 'Godatir Samachar' on February 5, 1990. In the said meeting, Shri Thackrey made a

speech and he made no secret that he sought votes on the plank of religion. The entire speech was tape recorded and there were audio and video cassettes of such speech. The synopsis of the said speech was that Nanded was the city of Gurdwara and it should be kept in mind that Guru of the Sikh religion had given kripa for protection of the Sikh religion. He further stated that the Hindus were leaving Kashmir and they were killed in Punjab. Shri Thackrey further stated that the country was Hindustan and the Hinduism needed protection. Referring to the political leaders like Sharad Pawar and Shri V.P. Singh, Shri Thackrey stated that they had only praised the Mohammadens and Shri V.P. Singh visited Snani-Imam after the elections but he did not care for Hindu votes. Shri Thackrey warned that Hindus could not be insubordinated are neglected and at the Assembly elections they would fly the Saffron flag and rule in the State of Maharashtra. He stated that he had the blessings of Tulja Bhavani, Goodess of Tuljapur and Goodess of Shivaji Maharaj. He also indicated that the history was twisted and the facts which would not be liked by Mohammadens had been altered. Shri Thackrey referred to a book written by Dr. Balasaheb Ambedkar "Ridders in Hinduism" published by the Government where Lord Rama and Lord Krishna had been maligned. It was further stated by the election petitioner that Dr. Deshmukh also addressed by saying that it was a golden day at Nanded because the feet of Balasaheb Thackrey had touched the soil of Nanded. The strength of Shri Balasaheb Thackrey should be the strength of Hindustan and the Saffron flag should be hoisted at Vidhan Bhavan.

3. With reference to 'Avhan and Awhan' the video tapes, it was contended by the election petitioner that in the said video tapes powerful exhortation and inducement to the voters to vote on the ground of religion had been made. There was an appeal that if a Muslim would try to destroy Hinduism in Hindustan public would not keep quiet but take out the intestines like that of Afzulkhan. It was also alleged that Muslims were loyal to Pakistan and Urdu could not be the national language of Hindustan. An appeal was also made to the fact that the Rulers would visit Muslims and Mosques but not the Hindu temples and the Hindus should therefore constitute a Vote Bank and should hoist Saffron Flag on the Assembly building. The election petitioner alleged that the said tapes were circulated in Nanded and other places.

4. The election petitioner also alleged that on February 9, 1990, the inauguration meeting for commencement of the election campaign of Dr. Deshmukh was held at Shiwaji Maidan Stadium at Nanded. Shri Chandrakant, Shri Kirtane, Shri Nandu Kulkarni and others spoke. All of them championed the cause of Hinduism. The details of their speeches would be seen in the video cassettes. It was also alleged that there had been publicity through posters and pamphlets showing that the voters were asked to vote on the basis of religion. On the car of election agent of Dr. Deshmukh, Shri Sonwane, a poster was displayed which called upon the voters to vote in the name of Hindu religion. Such posters were displayed at various places at Nanded. The election petitioner alleged that the materials used for election campaign including the speeches delivered by the speakers of Shiv Sena and BJP for and on behalf of Dr. Deshmukh clearly amounted to corrupt practice under Section 123(3) and 123(3A) of the Representation Act.

5. Dr. Deshmukh contested the election petition by filing a written statement (Ex.7) inter alia denying the allegations made in the election petition about the corrupt practice alleged by the election petitioner. Dr. Deshmukh contended in the written statement that he was a candidate of

Shiv Sena at the last Assembly Elections and that Shri Sonwane was his election agent, but he denied that Shri Chandrakant Bagve or Vinayak Partharkar were incharge of his election campaign. He also stated that the details of the speeches and the posters had not been furnished by the petitioner and for want of specific particulars of such allegations, the petition should be dismissed. Dr. Deshmukh contended that Shiv Sena was a recognised political party having its own Constitution which was in keeping with principle of socialism, secularism and democracy. It was stated that the views expressed in 'Samna' newspaper by Shri Thackrey were his personal views. Dr. Deshmukh also stated that the views expressed in 'Samna' could not be attributed to Dr. Deshmukh as the views subscribed by him. Dr. Deshmukh also contended that the elections of other candidates of Shiv Sena and BJP party had not been challenged on the ground of election campaign on the score of religion. Such fact according to Dr. Deshmukh, would amply demonstrate that the campaign by Shiv Sena and BJP party had not been based on religion. He also denied that the propaganda machinery of the Shiv Sena was engaged on his behalf with his consent or with the consent of his election agent. Dr. Deshmukh contended that only the statements which were contained in election manifesto of the party should be looked into and the ideology of Shiv Sena or that of Shri Thackrey was not relevant for deciding the election petitioner Dr. Deshmukh admitted that he was present at the meeting held at Nanded on February 4, 1990 called by Shiv Sena and he had accorded welcome to Shri Thackrey and touched his feet but such fact would not mean that whatever Shri Thackrey would state as his personal view would be the election campaign of Dr. Deshmukh. Dr. Deshmukh did not admit the headlines appearing in 'Godatir Samachar' on February 5, 1990 and he had denied the other parts of speeches of Shri Thackrey as published in the newspaper and contended that Shri Thackrey did not treat the Muslims as and Hindus. Dr. Deshmukh pointed out that on the other hand, Shri Antulay and Mohd. Azanharuddin had been accepted as true Indians. He pointed out that Shri Thackrey had criticised those mohammadans who were anti-Indians or anti-nationals. Dr. Deshmukh also contended that the cassettes of 'Avhan' and 'Awhan' did not contain any insinuation asking the voters to vote on the basis of religion and no part of the speeches did promote illwill or hatred between the two communities.

6. Coming to the meeting held at Narsi, Dr. Deshmukh stated that he was not present at the meeting and anything stated in such meeting was not binding on the petitioner and his election agent. As regards audio and video cassettes. Dr. Deshmukh stated that report of such speeches did not reflect the true contents of the speeches and therefore the same should not be looked into by the Court.

7. Coming to the alleged propaganda made by Dr. Deshmukh and his election agent through posters, publication Etc., Dr. Deshmukh stated that such posters and publications has not been displayed or published with the consent of Dr. Deshmukh and there was no evidence to show that such posters or publications were made at the instance of Dr. Deshmukh. With reference to the Annexure A. Dr. Deshmukh stated that the although the said annexure was issued in the name of Dr. Deshmukh but in fact the same did not bear his signature and as such the same could not be treated as issued by Dr. Deshmukh. He also contended that the car in which offensive posters were stated to have been displayed, did not belong to his election agent and he was not responsible for anything displayed in such car. Dr. Deshmukh stated that there were internal disputes of Congress I party and the people did not vote for the Congress I party. It was also stated that the election petitioner was the Chairman of the University center at Nanded and he was prosecuted for various offences under Sections 520,

506 and 467 of Indian Penal Code. The people also did not like the petitioner's seeking permission to start Engineering and Architectural College at Nanded known as College of Engineering and Architecture. It was contended that the voters believed that the election petitioner was acting only for his personal gains and he was not concerned with the welfare of the voters. It was for such reasons that they did not vote for the election, petitioner. It may be stated here that the respondent Nos. 2 to 5 in the election petition were served with notice but they did not appear and contest the petition and the election petition was therefore decided ex parte against them. Respondent No. 6 although appeared through an Advocate, did not file any written statement.

8. On the pleadings of the parties, 13 issues were framed by the learned Judge. The learned Judge, however, answered Issue No. 4:- "whether the petitioner proves that respondent No. 1 utilised the propaganda machinery of Shiv Sena party", in the negative. The learned Judge, however, answered issue No. 6 and Issue No. 8 in the affirmative only to the extent indicated in the judgment. The learned Judge also answered Issue No. 10 to the effect "whether the petitioner proves that respondent No. 1, his election agent and other persons named in the petition with the consent of respondent No. 1 and his election agent, carried out election campaign on the basis of religion and also with a view to promote religious hatred between different class of citizens and thus committed corrupt practices under Section 123(2), (3), (3A) of the Representation People Act?", in the affirmative. The learned Judge by the impugned judgment held that in view of such corrupt practice, the election of Dr. Deshmukh was liable to be set aside. As aforesaid, the learned Judge also awarded a cost of Rs. 10,000 against Dr. Deshmukh and in favour of the election petitioner.

9. Shri Ramachandran, learned Advocate appearing for Dr. Deshmukh, has submitted that the expression "consent" in relation to a corrupt practice as used in Section 123(3) and 123(3A) of the Representation Act has been interpreted by this Court as not mere knowledge of or connivance at a corrupt practice. For such contention, the learned Counsel has referred to decision of this Court in Samant N. Balkrishna Etc. v. George Fernandez and Ors. Etc. . He also referred to another decision of this Court in Haji C.H. Mohammed Koya v. T.K.S.M.A. Muthukoya . Mr. Ramachandran has contended that while consent may be proved not only by direct but also by circumstantial evidence, the same standard is to be applied in assessing such circumstantial evidence as it is applied in Criminal Law, namely, that the circumstances must point unerringly to only one conclusion and must not be consistent with any other explanation or hypothesis. He has submitted that this Court in Balakrishna Samant's case (supra) has indicated that although the trial of an election petition is conducted in accordance with the Civil Procedure Code, the corrupt practice must be proved in the same way as a criminal charge is proved. Mr. Ramachandran has also submitted that in construing the provisions of Section 123(3) and 123(3A) of the Representation Act, the widest possible latitude ought to be given to the expression of opinion in the context of democratic discourse so as not to infringe on the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. He has submitted that there is no doubt that freedom of such speech is subject to reasonable restrictions as envisaged by Article 19(2). Mr. Ramachandran has submitted that the restriction ought to be strictly construed. He has also submitted that the expression used in Section 123(3) of the Representation Act is "on the ground of religion, race, caste, community or language". Mr. Ramachandran has submitted that the said Section does not use the words with reference to religion, race, caste etc. but the expression used, namely, 'on the ground of would require that an

appeal be made for votes by speeches or propaganda which tell a voter that he is not true or loyal to his religion, caste etc. unless he votes for a particular person. If mere references to religion, community, caste etc. are construed as falling within the scope of Section 123(3) of the Representation Act, it would result in stifling debate on issues which have contemporary relevance and do come up at the time of elections. In a plural society such as ours, such issues pertain not only to religion and secularism but also language policy, reservation policies etc. Mr. Ramachandran has further submitted that in construing a speech made or a poster published in the course of an election, the widest latitude ought to be given. Referring to the decision of this Court in *Kultar Singh v. Mukhtiar Singh*, Mr. Ramachandran has submitted that this Court has held that the principles which have been applied in construing such a document as an election poster are well settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language or the adoption of metaphors and the extravagance of expression in attacking one another are all parts of the game and so when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. Mr. Ramachandran has further submitted that this Court has indicated in the said decision that there are several parties whose membership is either confined to or predominantly held by members of particular communities or religions and that an appeal made by such candidates of such parties for votes may, if successful, lead to their election and in an indirect way may be influenced by consideration of religion, race, caste, community or language. So long as the law recognizes such parties for the purpose of election and parliamentary life, this situation cannot be avoided. Mr. Ramachandran has submitted that the aforesaid view of this Court has been reiterated in the case of *Ebrahim Suleiman Salt v. M.C. Mohammed and Anr.*. In *Suleiman's* decision, the speech to the effect that "he made it very clear that the anti religious parties must not entertain the faint hope of securing the votes of any Muslim, in whose head the Islam's blood was flowing", was not held to be offending under the provisions relating to corrupt practice. Mr. Ramachandran has also submitted that if a person is not a party to an election petition but is liable to be guilty of a corrupt practice, a notice under Section 99 of the Representation Act is to be issued to such person and the Court has no discretion in the matter. For the aforesaid contention, reference to the decision of this Court in *D.P. Mishra v. Kamal Narayan Sharma and Anr.*' has been made by him.

10. Coming to the correctness of the factual finding of the High Court relating to the commission of corrupt practice, Mr. Ramachandran has submitted that the meeting of February 4, 1990 at Nanded was addressed by Shri Thackrey. Such a meeting was admittedly organised by Shiv Sena party. The record discloses that it was in the said meeting on February 4, 1990 that the appellant was officially declared as the Shiv Sena candidate. The last date for withdrawal of nomination papers was upto February 7, 1990 and it was open to the party to revoke applicant's nomination as party candidate upto that date. Mr. Ramachandran has submitted that in such a situation, it would be wholly unrealistic to expect that the appellant would be in a position to repudiate or dissociate himself from particular portions of the speech of the leader of Shiv Sena party even though he might not have

agreed with all that was said in the course of such a long speech or with the choice of words in the speech. Mr. Ramachandran has submitted that the presence of the appellant at the meeting of February 4, 1990 should not be construed as amounting to consent as interpreted by this Court in Balakrishna Samant's case (supra) or decision in Mohammed Koya's case (supra). Mr. Ramachandran has also submitted that in the written statement, the appellant also contended that he was also not present throughout the meeting. Mr. Ramachandran has further submitted that even if it is assumed that he consented to the speech delivered in the said meeting of February 4, 1990, the speech read as whole does not satisfy the requirements of Section 123(3) and 123(3A) of the Representation Act despite the strong and rhetorical language used in the said speech. The said speech does not appeal on the ground of religion nor does it promote feelings of enmity or hatred on grounds of religion. He has also submitted that even if the Court prima facie comes to the finding that the said speech of Shri Thackrey amounts to corrupt practice within the meaning of Section 123(3) and 123(3A) of the Representation Act and the appellant had consented to such speech of Shri Thackrey, it was an obligation of the Court to issue a notice under Section 99 of the Representation Act to Shri Thackrey and no finding of corrupt practice could have been rendered against the appellant in the absence of a notice under Section 99 of the Representation Act.

11. Coming to the speech delivered in the meeting held on February 9, 1990 at Nanded, Mr. Ramachandran has submitted that the said meeting was "Shubharambh" ceremony when the appellant inaugurated his campaign two days after the last date for withdrawal of nominations. Admittedly, no permission for a regular meeting was granted by the police authorities. According to the person who took a video recording of the meeting, there was slogan shouting but no speeches were made and according to the appellant's witness there was no speech delivered in the said meeting. Mr. Ramachandran has submitted that whatever had been spoken at the said meeting were in reality long discussion with party men and sympathisers and it did not assume the formal character of the speech but was part of the inauguration of the campaign for the election. The leaders of the Shiv Sena and also representatives of the BJP which was a partner of the Shiv Sena in the election contest were present and the presence of the appellant cannot amount to consent as interpreted by this Court in the decisions referred to hereinbefore. Mr. Ramachandran has also submitted that even if it is assumed that the appellant has consented to the said statement attributed to the various speakers at the said inauguration of election meeting, none of the so called offending portions set out in para 5.04 at pages 212-216 of Vol. I falls within the scope and ambit of Sections 123(3) and 123(3A) of the Representation Act. Mr. Ramachandran has also submitted that the 'Godatir Samachar' publication was made on the basis of the report made by the reporter who according to his understanding of the portion of the speech recorded the same in his own language. He has further submitted that the newspaper publication relied on by the election petitioner for the purpose of offensive part of the speeches delivered at the meeting should not be taken into consideration as being inadmissible or not proved. The learned Judge unfortunately erred in relying on the newspaper publication in basing impugned decision.

12. Coming to the allegation about publishing the material, namely, advertisements, pamphlets, posters etc. alleged in the election petition amounting to corrupt practice under Section 123(3) and 123(3A) of the Representation Act, Mr. Ramachandran has submitted that only such material as can be directly attributed to the appellant or his election agent may be taken into account. He has also

submitted that there has been clear finding by the High Court in respect of issue No. 4 that it was not proved that the appellant used the machinery of Shiv Sena party. On an analysis of all the material attributable to the appellant and his election agent as summarised in the discussion under Issue No. 6, Mr. Ramachandran has submitted that none of them read as a whole in the context of the tests laid down by this Court for adjudging speeches, publicity material etc. can be said to offend Sections 123(3) and 123(3A) of the Representation Act. An offending sentence namely "teach the Muslims a lesson" is to be found in posters of Ex.O series. With regard to the said posters the evidence relied upon by the High Court does not connect the appellant or his election agent with the same. The evidence of P.W. 20 Ramesh Rasal who in addition to being Executive Editor of 'Godatir Samachar' is a partner of Ramesh Offset Press, does not connect the appellant or his agent with these particular posters. Evidence in the form of receipts from Ramesh Offset Press is still not evidence in regard to these particular posters and therefore the proof has not fulfilled the standard of requirement of proof in a criminal case. Mr. Ramachandran has submitted that the manifestation of popular choice should not be easily interfered with unless there is proof that a corrupt practice has been resorted to. Mr. Ramachandran has also submitted that if strict standards required to be established are applied corrupt practice has not been established in the instant case. The impugned judgment of the High Court is speculative and lies in the realm of conjectures. Accordingly, the same should be set aside by allowing this appeal.

13. Mr. Kotwal, the learned Senior Counsel appearing for the election petitioner Shri Kamal Kishore Nanasaheb Kadam has seriously disputed the contentions made by Mr. Ramachandran. He has submitted that the appellant Dr. Deshmukh filed his nomination paper as a nominee of Shiv Sena-BJP alliance. It is immaterial whether the date for withdrawal was not over when the election meeting of Shiv Sena was held at Nanded on February 4, 1990. According to Mr. Kotwal, it cannot be reasonably contended that the appellant who filed the nomination paper as a nominee of Shiv Sena would deny that although he attended the meeting on February 4, 1990 and sought the blessing of Shiv Sena Supremo, Shri Thackrey, he did not subscribe to the appeal for voting in the election by the said Supremo of Shiv Sena. Mr. Kotwal has submitted that when election campaign meeting of the Shiv Sena was held and the appellant as a nominee of Shiv Sena attended the said meeting and publicly sought the blessings of Shiv Sena Supremo and listened to the address made by him, by his conduct, he made it quite clear before the public that he had subscribed to the views expressed in the said meeting by the Shiv Sena Chief. It is not the case of the appellant that he had protested to any part of the speech delivered by Shri Thackrey or even explained his own viewpoints to the members of the public present thereby indicating that he had subscribed only to the election manifesto of Shiv Sena and not to any, other statement of the speakers in the said meeting beyond such election manifesto. Mr. Kotwal has also submitted that the meeting of February 9, 1990 was the meeting organised by the appellant himself so as to formally start his election campaign. Such meeting was termed as 'Shubharambh'. Mr. Kotwal has stated that although police had not given permission to hold a formal public meeting, such election campaign meeting had in fact been held in a conspicuous public place at Nanded and it has transpired from evidence that a large number of person had attended the said meeting. In the said meeting, the local Shiv Sena and BJP leaders addressed and they appealed to vote for Dr. Deshmukh mainly on the score of religion. In the written statement, the appellant stated that no meeting was held on February 9, 1990. In the alternative, it was contended in the written statement that the appellant had not asked the speakers



to speak. Mr. Kotwal has submitted that such contention made in the written statement, has been proved to be false by convincing and unimpeachable evidences adduced in the case. The editor of 'Godatir Samachar' (P.W. 20) the video Photographer, Shri Malwa (P.W. 30) and the Police Sub-Inspector Mohd. Abdullah Khan (P.W. 8) had proved beyond an iota of doubt that the appellant himself was present in the election meeting of February 9, 1990 when the speeches were delivered by Shri Nandu Kulkarni, Shri Sunil Nerlekar, Shri Chandrakant Mahski, Sri Ganesh Kirtane and others. In the advertisement given for the meeting termed a 'Shubharambh' to be held on February 9, 1990, it was specifically mentioned that Shri Ganesh Kirtane, Shri Chandrakant Sonwane, Shri Nandu Kulkarni and a number of other people would remain present. Shri Chandrakant Mahski addressed the said meeting by stating that the hindu flag would fly on the Maharashtra Assembly. Shri Sunil Nerlekar also spoke in the said meeting and said that nothing was done for Hindus but hindus had been ridiculed. He gave a warning that those who would insult hindus would not be tolerated by the hindus because the nation was a nation of hindus. He also stated that on the basis of their own strength the hindus were contesting the election. Mr. Kotwal has submitted that although policies of the ruling Congress I party were criticised but the speakers made it quite clear that hindus should unite for the cause of the hindus and would vote for the appellant Dr. Deshmukh so that the interest of hindus should be protected. He has submitted that such statement obviously refers to an appeal on the score of hindu religion and the passion on the basis of religion was sought to be roused amongst the hindu voters with an appeal to unite to protect the interest of one community, namely, the hindus. He was submitted that such speech, if considered in the proper perspective, must be held to have offended the sentiments of the followers of other religion and was intended to rouse the communal passion on the score of religion. Mr. Kotwal has also referred to one of the specimen of the posters, being Ext. O.20. In the said poster, it was indicated that to protect hinduism and hindu religion the valuable vote should be cast in favour of the Shiv Sena-BJP alliance candidate Dr. Deshmukh and such vote should be cast to "teach a lesson to muslims" . Such posters were exhibited in a number of places in the town of Nanded. Convincing evidence has been led that such posters were displayed at the residence of election agent and also at the residence and chamber of Dr. Deshmukh. In the car used by election agent of Dr. Deshmukh, such poster was also displayed. Such poster was also displayed on the sign board of Shiv Sena Shakha and other public places Mr. Kotwal has contended that the partner of Ramesh Offset Press, Shri Ramesh Rasal (P.W. 20) has clearly stated that the appellant and his election agent placed orders for the printing of such posters. He has submitted that although Mr. Ramachandran, the learned Counsel for the appellant contended that Shri Rasal did not specifically give evidence that Dr. Deshmukh himself had placed orders for such posters or paid price for printing of such posters, such submission should not be accepted. Mr. Kotwal has submitted that if in an election such posters are allowed to be displayed at various public places and also at the residence of the appellant and in the car where the election agent of the appellant had been moving for canvassing the vote for the appellant, the appellant should not be permitted to contend that some independent agency without his authority had displayed such posters and he should not be held responsible for such publicity on account of the said posters. Mr. Kotwal has submitted that the poster is offensive per se because along with the appeal to vote for Dr. Deshmukh a statement was made in the said poster that the muslims should be taught a lesson. Such poster, in any event, was intended to bring disharmony between the two communities, namely, the hindus and the muslims and was definitely intended to arouse passion on a communal basis in the minds of the Voters. The said poster was intended to bring hatred between

the two communities, namely, the hindus and the muslims. He has, therefore, submitted that on the score of displaying the said poster without any other evidence about corrupt practice, the finding of the High Court that the appellant was guilty of corrupt practice under Section 123(3) and 123(3A) of the Representation Act should be upheld and no interference is called for in this appeal. Mr. Kotwal has also made elaborate submissions on the other offending advertisements and also the wall paintings for the purpose of contending that all such materials were solely intended to bring disharmony between the two communities and to make an appeal on the score of religion so that the hindus should vote only in favour of the Shiv Sena-BJP candidate, Dr. Deshmukh who would safeguard the interest of hindus.

14. Mr. Kotwal has submitted that Section 123 has undergone a change after the amendment in 1961. Prior to such amendment in 1961, Section 123 of the Representation Act only prohibited systematic appeal by candidate or any other person on behalf of the candidate to vote or refrain from voting on the score of caste, religion, race, community 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 that candidate's election. In the objects and reasons for the amendment to Section 123, it was indicated that such amendment was necessary for curbing communal and separatist tendencies in the country. It was proposed to widen the scope of corrupt practice mentioned in Clause 3 of Section 123 of the Representation of People Act. Mr. Kotwal has submitted that in various decisions dealing with the scope and ambit of corrupt practice under the Representation Act, this Court has observed that the paramount and basic purpose underlying Section 123(3) of the Act is the concept of secular democracy. Section 123(3) was enacted to eliminate from the electoral process appeals to divisive factors such as religion, caste etc. which give vent to irrational passions. It is essential that powerful emotions generated by religion should not be permitted to be exhibited during elections and the decision and choice of the people are not coloured in any way. In this connection, Mr. Kotwal has referred to the decision of this Court in *S. Harcharan Singh v. S. Sajjan Singh and Ors.* . Mr. Kotwal has submitted that in order to determine whether certain activities come within the mischief of Section 123(3), regard must be had to the substance of the matter rather than to the mere form or phraseology. The inhibition of the section should not be permitted to be circumvented indirectly or by circuitous or subtle devices. The Court should attach importance to the paramount purpose of Section 123(3) namely to prevent religious influence from entering the electoral field. The nature and consequence of an act may not appear on its very face but the same can be implied having regard to the language, the context, the status and position of the person issuing the statements, the appearance and known religion of the candidate, the class of persons to whom the statement or act is directed. It has been submitted that it is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. Mr. Kotwal has submitted that in the guise of criticising political policies, one should not directly or indirectly or by circuitous or subtle devices permit religious influence to enter the electoral field.

15. Mr. Kotwal has submitted that to prevent corrupt practice it is necessary to name all persons who have indulged in corrupt practice in an election campaign. A duty has been cast on the Court to name not only those who are parties to the proceeding indulging in corrupt practice but also those who are not parties but have connived and indulged in corrupt practice either with the consent by a

candidate or his election agent or have indulged in corrupt practice on their own without such consent. According to Mr. Kotwal an order under Section 99 of the Representation Act need not be passed simultaneously with the order under Section 98 and naming of collaborators to corrupt practice who were not parties in the election case, may be made subsequently by a supplementary or complimentary order. Mr. Kotwal has submitted that Section 123 should be construed pragmatically by keeping in mind that the mischief for which said Section has been incorporated in the Representation Act, is not suppressed. According to Mr. Kotwal, the proceeding against the returned candidate and all those who are parties to the petition should be treated as separate and distinct from the proceeding against collaboratOrs. He has submitted that for the purpose of naming the collaborators, the returned candidate is not entitled to a hearing in the notice proceedings. He has also submitted that for the purpose of finding against the parties, the proceeding should not be kept pending only for the purpose of naming the collaborators, who were not on record, after following the appropriate procedure. In this connection, Mr. Kotwal has referred to the decisions of this court in *R.M. Seshadri v. G.V. Pai and Ors.*, *D.P. Mishra v. Kamal Narayan Sharma and Anr.* *D.P. Mishra v. Kamalnarayan Sharma and Ors.*, *Rahim Khan v. Khurshid Ahmed and Ors.* . Mr. Kotwal has submitted that for the purpose of naming the collaborators, the High Court may be directed to follow appropriate procedure for giving notice to the collaborators so as to afford an opportunity to them to place their case but the decision made against the appellant should not be kept pending. He has contended that in the facts and circumstances of the case, the corrupt practice pursued by the appellant having been fully established by cogent and convincing evidence, the appeal preferred by Dr. Deshmukh should be dismissed.

16. After giving our anxious consideration to the facts and circumstances of the case and contentions made by the respective counsel for the parties, it appears to us that in the instant case, it has been convincingly established that the appellant has permitted to display poster Ext. O.20 for the purpose of his election campaign. In the said poster, appeal to vote for the appellant was made for the purpose of teaching a lesson to muslims. Such appeal, to say the least, was potentially offensive and was likely to rouse passion in the minds of the voters on communal basis. Such appeal to teach a lesson was also likely to bring disharmony between the two communities namely the hindus and the muslims and offended the secular structure of the country. In our view, use of such poster by itself is sufficient to hold that the appellant had indulged in corrupt practice under Section 123(3) and 123(3A) of the Representation Act. We may, however, indicate that speeches delivered in the election meeting by leaders of political parties should be appreciated dispassionately by keeping in mind the context in which such speeches were made. This Court has indicated a note of caution that in election speeches appeals are made by candidates of opposing political parties often in an atmosphere surcharged with partisan feelings and emotions. Use of hyperboles or exaggerated language or adoption of metaphors and extravagance of expression in attacking one party of a candidate are very common and court should consider the real thrust of the speech without labouring to dissect one or two sentences of the speech, to decide whether the speech was really intended to generate improper passions on the score of religion, caste, community etc. In deciding whether a party or his collaborators had indulged in corrupt practice regard must be had to the substance of the matter rather than mere form or phraseology. In *Kultar Singh's case* (supra), this Court has recognised that there are several parties whose membership is either confined to or predominantly held by members of some communities or religion and that an appeal made by

candidates of such parties for votes may in an indirect way concavely be influenced by considerations of religion, race, community or language. So long as the law recognises such parties for the purpose of election and parliamentary life, this situation cannot be avoided. Such view has also been reiterated in later decisions of this Court. It has been very strenuously contended by the learned Counsel for the appellant that appeal to vote for 'hindutwa' should not be confused with appeal to vote only for a member of one community namely the hindus. Criticism of partisan treatment meted out to the hindus by the ruling congress party or appeasement policy in favour of one community or followers of a particular religion impairing national integrity and appeal to oppose such improper and anti national policy should not be held to be an appeal to vote only on the basis of a particular religion. It has been contended that the thrust of the speeches was that in equal treatment meted out to hindus and deliberate hurting of sentiments of hindus have encouraged divisive forces and anti-national elements in the country and hindus should be aware of such divisive forces and try to unite against such divisive and anti national forces in selecting proper candidate who would safeguard the unity and integrity of the country. In our view, it is not necessary to consider the philosophy of hindu religion and its tenets of tolerance and respect for different religious faiths for the purpose of appreciating whether appeals was really made for hindutwa which is something different from outward practices and some of the followings professed by followers of hindu religion. In the instant case, we have already indicated that the appellant had given publicity to the voters by exhibiting the poster Ext. 0.20 which was per se highly offensive and potentially vulnerable and was likely to bring natred and misunderstanding between the two communities, namely, the hindus and the muslims. In our view, the poster containing an appeal to vote for the appellant 'to teach the muslim a lesson' cannot be justified in any manner even by giving reasonable latitudes in election speeches.

17. As the appeal can be disposed of by holding that the appellant was guilty of corrupt practice for which his election was liable to be set aside the displaying the said poser Ext. 0-20, we refrain form considering the real impact; of the speeches delivered in the meetings of February 4, 1990 and February 9, 1990 by making an indepth analysis of the same in the light of the guidelines indicated hereinbefore.

18. In the special facts of the case, it also appears to us that it may not be necessary to consider the disputes contentions as to whether the general publicity of Shiv Sena and BJP for the general election in Maharashtra and of Nanded Assembly Constituency amounts to publicity by or with the consent of the appellant and whether such publicity can be construed as constituting corrupt practice under Section 123(3) and 123(3A) of the Representation Act. It may, however, be indicated here that the High Court has answered issue No. 4 namely "whether the petitioner proves that Respondent No. 1 utilised the propaganda machinery of Shiv Sena party" in the negative.

19. In that view of the matter, it is also not necessary to remand the matter to the High Court for naming the collaborators of corrupt practice by following the appropriate procedure for the purpose. This appeal therefore fails and is dismissed with costs.