



KAMARAJ IAS ACADEMY
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‘Corrupt act’ under Representation of People Act, 1951

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Why in News: the Supreme Court observed that no one in India votes for a candidate based on their educational qualifications and, thus providing false information about an electoral candidate’s qualifications cannot be considered a “corrupt practice” under Sections 123 (2) and Section 123 (4) of the Representation of People’s Act, 1951.

A Brief about the case

In “Anugrah Narayan Singh v. Harsh Vardhan Bajpayee”, a bench of Justices K.M. Joseph and BV Nagarathna of the Apex Court heard a plea challenging a 2017 Allahabad High Court ruling, dismissing a similarly titled petition to declare the election of a BJP MLA as “null and void”.

However, the Apex Court refused to interfere with the High Court’s order of dismissal.

The petition filed by former Congress MLA Anugrah Narayan Singh said that BJP MLA Harsh Vardhan Bajpayee committed a “corrupt practice” under Section 123(2) by interfering in the free exercise of electoral rights of the voters by not disclosing his liabilities and correct educational qualifications in his affidavit of nomination.

It also argued that a “corrupt practice” under Section 123(4) was committed by Bajpayee in publishing a false statement of fact about his character and conduct to influence the outcome of his election, knowingly.

However, Justice Raj Beer Singh of the Allahabad High Court held previously that the “inaccuracy or concealment regarding educational qualification of the respondent did not amount to unduly influencing the voters, as the defect in disclosure was not of substantial character that could have materially prejudiced the prospects of the election, for it to be termed as a corrupt practice within the meaning of Section 123 of the Representation of People Act.”

‘Corrupt practices’ under the RPA, 1951

Section 123 of the Act defines ‘corrupt practices’ to include bribery, undue influence, false information, and promotion or attempted promotion of “feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language” by a candidate for the furtherance of his prospects in the election.

Section 123 (2) deals with ‘undue influence’ which it defines as “any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the consent of the candidate or his election agent, with the free exercise of any electoral right.”

This could also include threats of injury, social ostracism and expulsion from any caste or community.

Moreover, convincing a candidate or an elector that they will become “an object of divine displeasure or spiritual censure” will also be considered an interference “with the free exercise of the electoral right of such candidate or elector.”

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

Section 123 (4) extends the ambit of “corrupt practices” to the intentional publication of false statements which can prejudice the outcome of the candidate’s election.

Under the provisions of the Act, an elected representative can be disqualified if convicted of certain offenses; on grounds of corrupt practices; for failing to declare election expenses; and for interests in government contracts or works.

Practices that court held as corrupt practices in past

In 1994, the Supreme Court’s ruling in “SR Bommai v. Union of India”, which otherwise held secularism to be a part of the ‘basic structure, the court said, “whatever the attitude of the State towards the religions, religious sects, and denominations, religion cannot be mixed with any secular activity of the State.” The encroachment of religion into secular activities is strictly prohibited, the court stated while adding that the same is clear from sub-section (3) of Section 123 of the Representation of the People Act, 1951. However, even as far back as 1955, the Apex Court in “Jamuna Prasad Mukhariya v. Lacchi Ram” upheld the constitutional validity of Section 123 (3).

In 2017, a seven-judge constitution bench of the apex court headed by former Chief Justice TS Thakur in “Abhiram Singh v C.D. Commachen” held that an election will be annulled if votes are sought in the name of a candidate’s religion, race, caste, community, or language, as per Section 123 (3) which prohibits the same.

More recently in 2022, the top court directed a three-judge bench to look into prayers for reconsidering its 2013 judgment in “S. Subramaniam Balaji vs State of Tamil Nadu” where the court held that promises of freebies cannot be termed a corrupt practice. However, the matter is still yet to be decided.

Disqualification on ground of corrupt practices.

- The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted within a period of three months from the date such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

- Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975, may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

- Before giving his decision on any question mentioned or on any petition, the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.