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February 12

JAGDEV SINGH SIDHANTI

v.

PRATAP SINGH DAULTA

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Elections—Advocating the cause of a certain language—If amount. to a corrupt practice—Using ‘Om Dhvaj’—If amounts to a corrupt practice—Representation of the People Act, 1951 (Act 43 of 1951), s. 123(3).

The appellant was declared elected to the House of the People from a parliamentary constituency. The respondent No. 1 challenged the election of the appellant on the ground that the appellant, his election and other agents committed many corrupt practices falling within s. 123 of the Representation of the People Act, 1951. The main grievance of respondent No. 1 was that the appellant and his agents had made appeals to the electorate to vote for him or to refrain from voting for Daulta (Respondent No. 1) “on the ground of his religion and language”, and that the appellant and his agents used a religious symbol—a flag called “Om Dhvaj” in all the election meetings. The case of the appellant was that the flag was not a religious symbol and denied that it was used on any occasion by him or his agents and submitted that it was used only by one person who was always accustomed to carry it on his motor car. The appellant also pleaded that an appeal to the electorate on the ground of language or religion did not amount to a corrupt practice within the meaning of s. 123 of the Act.

The Tribunal dismissed the election petition of respondent No. 1 but the High Court allowed the appeal and declared the election of the appellant void under s. 100(1)(b) of the Act. Hence the appeal.

Held (i) The use of or appeal to the national or religious symbols to be a corrupt practice must be made by the candidate or his election agent, or by some other person with the consent of the candidate or his election agent, before it can be regarded as a ground for declaring the election void.

(ii) ‘Om’ is regarded by Hindus as having high spiritual or mystical efficacy: it is used at the commencement of the recitations of religious prayers. But the attribute of spiritual significance will not necessarily impart to its use on a flag the character of a religious symbol within the meaning of s. 123. A symbol stands for or represents something material or abstract. To be a religious symbol, there must be a visible representation of a thing or concept which is religious. To ‘Om’ high spiritual or mystical efficacy is undoubtedly ascribed, but its use on

a flag does not symbolise religion or anything religious. The High Court erred in holding that the 'Om' flag was a religious symbol and its use in an election comes within the purview of cl. (3) of s. 123 of the Act.

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(iii) Clause (3) of s. 123 of the Act must be read in the light of the fundamental right which is guaranteed by Art. 29(1) of the Constitution; the clause cannot be read as trespassing upon the fundamental right under Art. 29(1).

Article 29(1) of the Constitution has conferred the right, among others, to conserve their language upon the citizens of India. Right to conserve the language of the citizens includes the right to agitate for protection of the language. Political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of s. 123(3) of the Act.

Jamuna Prasad Mukhariya and Ors. v. Lachhi Ram and Ors., [1955] 1 S.C.R. 608, distinguished.

(iv) The corrupt practice defined by cl. (3) of s. 123 is committed when an appeal is made either to vote or refrain from voting on the ground of a candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of s. 100 read with s. 123(3). Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where, however, for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, making of such appeals or promises will not amount to a corrupt practice.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 936 of 1963.

Appeal from the judgment and order dated May 31, 1963, of the Punjab High Court in First Appeal from Order No. 2/3 of 1963.

Purshotham Trikamdas, Rajinder Nath Mittal, R. B. Datar, V. Kumar, B. P. Singh and Naunit Lal, for the appellant.

G. S. Pathak, Bawa Shiv Charan Singh, Hardev Singh, Rajendra Dhawan, Anand Prakash and Y. Kumar, for respondent No. 1.

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February 12, 1964. The Judgment of the Court was delivered by:—

SHAH, J.—At the general elections held in February 1962 five candidates contested the election to the House of the People from the Jhajjar parliamentary constituency. On February 27, 1962 the appellant Jagdev Singh Sidhanti was declared elected. Pratap Singh Daulta who was one of the candidates at the election then filed a petition with the Election Commission praying, *inter alia*, that the election of the appellant be declared void on the ground that the appellant—Sidhanti—his agents, and other persons with his consent, had committed certain corrupt practices in connection with the election. Daulta stated that the appellant Sidhanti was set up as a candidate to contest the election by the Haryana Lok Samiti, that the appellant and six other persons—Piare Lal Bhajnik, Ch. Badlu Ram, Pt. Budh Dev, Prof. Sher Singh, Mahashe Bharat Singh and Acharya Bhagwan Dev who were leaders and active workers of the Gurukul Section of the Arya Samaj had organised a political movement called “the Hindi agitation” in 1957 the real object of which was to promote feelings of enmity and hatred between the Sikh and the Hindu communities in the State of Punjab “on the ground of religion and language” to promote their prospects in the general elections to be held in 1962. and for that purpose they held meetings in the Haryana region of the Punjab and appealed to the electorate to vote for Sidhanti “on the ground of his religion and language”, and used a religious symbol—a flag called “Om Dhvaj” in all these meetings, that the appellant himself made similar appeals to the electorate and appealed to them to refrain from voting for Daulta who was a sitting member of the House of the People from the constituency stating that he—Daulta—was an enemy of the Arya Samaj and of the Hindi language, that during the election campaign fifteen meetings were held between December 10, 1961 and February 18, 1962 and at all these meetings appeals were made to the electorate on the ground of religion and language of Sidhanti, and attempts were made to promote feelings of enmity and hatred between Sikhs and Hindus of the Punjab. Allegations about undue influence on the voters in the exercise of their free electoral right were also made in the petition, and details of these

alleged corrupt practices were furnished in the schedule annexed to the petition.

Sidhanti denied that the six persons who were named as his agents and supporters ever acted as his agents in his election campaign and submitted that they were merely interested in the success of the candidates set up by the Haryana Lok Samiti and acted throughout "on their own and not as his agents". He also submitted that the Haryana Lok Samiti had no connection with the Arya Samaj, it being a political organization started by Prof. Sher Singh who was an important political leader in the Haryana region. Sidhanti admitted that he had participated in the meetings to canvass votes, but claimed that he was not responsible for convening the meetings or for the speeches made by others in those meetings, that the Om flag was not a religious symbol and denied that it was used on any occasion by him or his agents or the six persons named by Daulta in his petition, except Bhagwan Dev who was accustomed "throughout his career" to carry a pennant with "Om" and his own name inscribed thereon on his motor vehicle, but carrying of such a flag or pennant on Bhagwan Dev's vehicle during the election was not with his (Sidhanti's) consent and that it did not amount to commission of a corrupt practice as defined in the Act, that the residents of Haryana area were mainly Hindi-speaking, but the Government of Punjab had made Punjabi language in Gurmukhi script a compulsory subject at various levels of school education and this gave rise to a wide-spread agitation against the policy of the Government, that to resist the implementation of the policy and the programme of the Government in the administrative, economic and developmental spheres and to mitigate the hardships of the residents of the Haryana region and to secure redress of their grievances the Haryana Lok Samiti was formed, and an appeal to the electorate to secure a reversal of the policies and programme of the Government was not, it was submitted, an appeal on the ground of language or religion and did not amount to a corrupt practice within the meaning of s. 123 of the Representation of the People Act, 1951.

The Tribunal held, *inter alia*, that the "Om flag" was not a "religious symbol" of the Arya Samaj, that no satisfactory proof was adduced that Om flag had been used as a

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symbol of Arya Samaj or that an appeal to secure votes with the aid of the flag was made to the electorate by Sidhanti or by any one else with his consent, that there was no satisfactory evidence to establish that appeals were made to the electorate to vote for Sidhanti or to refrain from voting for the other candidates on the ground of religion or language, and that the applicant Daulta failed to prove that an appeal on the ground of caste, community or religion or language had been made to the electorate to further the prospects of Sidhanti or to prejudicially affect the election of the other candidates. On these and findings recorded on other issues not material in this appeal, the petition filed by Daulta was dismissed by the Election Tribunal.

Daulta preferred an appeal against that order to the High Court of Judicature for Punjab. The High Court held that the word "Om" is a religious symbol of the Hindus in general and of the Hindus belonging to the section known as Arya Samaj in particular and that the flag bearing the inscription "Om" is a religious symbol, that "Om Dhvaj" was flown during the election campaign on the election offices of the Hariana Lok Samiti especially at Sampla and Rohtak, that the Samiti office was used by Sidhanti for his election campaign, that Hariana Lok Samiti was generally using the "Om Dhvaj" to further the prospects of its candidates, that out of the agents and supporters of Sidhanti "Bharat Singh at least once and Bhagwan Dev invariably used" the Om flag on their vehicles while attending the meetings convened by the Hariana Lok Samiti in furtherance of the election campaign of Sidhanti, that the Om flag was flying "on the *pandal* of the meeting" held at Majra Dubaldhan on January 19, 1962 when Sidhanti and his agents and supporters delivered speeches in support of the election campaign and that at the meeting held at Rohtak town, Piare Lal Bhajnik sang a song in the presence of Sidhanti, the purport of which was that the honour of the Om flag should be upheld, that Bhagwan Dev was using the Om flag with the consent of Sidhanti and that Piare Lal Bhajnik at the Rohtak town meeting also sang the song in honour of the Om flag with the consent of Sidhanti. The High Court further held that the appellant had delivered speeches at Majra Dubaldhan in the *pandal* on which the Om flag was flying, that as even an isolated act of the use

of or appeal to the Om flag may constitute a corrupt practice under s. 123(3) that corrupt practice by Sidhanti and his agents and by his supporters with his consent was established. The High Court also held that Sidhanti had appealed for votes on the ground of his language and had asked the electorate to refrain from voting for Daulta on the ground of the language of the latter, and such appeals constituted a corrupt practice. The High Court accordingly allowed the appeal and declared the election of Sidhanti void under s. 100(1)(b) of the Act. Against the order this appeal is preferred with certificate granted by the High Court.

Two principal questions which survive for determination in this appeal are:

- (1) Whether a religious symbol was used in the course of election by the appellant, his agents or other persons with his consent in furtherance of the prospects of his election; and
- (2) Whether appeals were made to the electorate by Sidhanti, his agents or other persons with his consent to vote in his favour on account of his language and to refrain from voting in favour of Daulta on the ground of his language.

In order to appreciate the plea raised by counsel for the parties and their bearing on the evidence it may be useful to refer to the political background in the Haryana region and the constituency in particular, in which corrupt practices are alleged to have been committed. The territory of the State of Punjab is divided into two regions—the 'Hindi-speaking region' and the 'Punjabi-speaking region'. The Hindi-speaking region is very largely populated by Hindus, while in the Punjabi-speaking region the population is approximately equally divided between the Hindus and Sikhs. In the Punjab before the partition, Urdu and English were the two official languages. After the partition a controversy about the official language arose. The Government of Punjab decided to replace Urdu and English by Hindi in the Hindi-speaking region and Punjabi in the Punjabi-speaking region, and for that purpose a scheme called the 'Sachar formula' was devised, the salient feature of which was that every student reading in the Punjab schools, by the time he passed

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his matriculation examination should be proficient both in Hindi and Punjabi. Under the scheme two Regional Committees were formed—one known as the Hindi Regional Committee and the other the Punjabi Regional Committee. The function of the Committees was to advise the local Government in matters of finance and other related matters. There was great resentment against the formation of the Regional Committees and the implementation of the Sachar formula which resulted in the launching of a movement called “the Hindi agitation”. The agitation against the language policy of the Government gained strength and there was a great mass movement in 1957 in the entire State of Punjab. In the last week of December 1957 there was a settlement between the organisers of the movement and the State Government and the movement was called off. It appears that some of the leading figures in this agitation attempted to make political capital out of this movement and set themselves up as probable candidates for the next election.

In the Arya Samaj in the Punjab there are two major sections, one called the ‘Gurukul Section’ and the other called the ‘College Section’. The Gurukul Section is again divided into the Hariana Section and the Mahashe Krishna Section. It is the case of Daulta that it is the Gurukul Section of the Araya Samaj relying upon the religious and linguistic differences which sought to make at the time of the election, appeals to religions and use of religious symbols. As we have already observed, Daulta challenged the election on the ground that Sidhanti, his election and other agents committed many corrupt practices. Before the Tribunal he restricted his case to the corrupt practices falling within cls. (2), (3) and (3A) of s. 123 of the Representation of the People Act 1951. His plea of undue influence falling within cl. (2) failed before the Tribunal and also before the High Court, and it has not been relied upon before us. Similarly his plea that Sidhanti, his election and other agents had promoted or attempted to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language was negatived by the Tribunal and also by the High Court and that plea also does not fall to be determined by us. Daulta had also alleged

that appeals were made by Sidhanti and his election and other agents, to the electorate to vote for him or refrain from voting for Daulta on the ground of his—Sidhanti's—religion and language and that Sidhanti and his agents used and appealed to religious symbols such as the Om flag for the furtherance of the prospects of the election of Sidhanti and for prejudicially affecting the election of Daulta. It is on this last question about the use of and appeal to religious symbols and appeal to the language of the two candidates for the furtherance of the prospects of the election of Sidhanti that the Tribunal and the High Court have differed.

It may be useful to refer to the relevant provisions of the Act, before dealing with the matters in dispute. Section 100(1) sets out the grounds on which an election may be declared void. In so far as that section is material in the present appeal, it provides:

“Subject to the provisions of sub-section (2) if the Tribunal is of opinion.—

- (a) * * * * *
- (b) that any corrupt practice has been committed by returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;
- (c) * * * * *
- (d) * * * * *

the Tribunal shall declare the election of the returned candidate to be void.”

By sub-s. (2) if in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Tribunal is satisfied

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders and without the consent of the candidate or his election agent;
- (b) * * * * *
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election; and

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(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent,

the Tribunal may decide that the election of the returned candidate is not void. Section 123 sets out what shall be deemed to be corrupt practices for the purpose of the Act. Clause (3) as amended by Act 40 of 1961, which alone is material in this appeal, provides:

“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, 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.”

The clause falls into two parts (i) an appeal by a candidate, his agents or by other persons with the consent of the 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; and (ii) use of or appeal to religious symbols, national symbols or national emblems for the furtherance of the prospects of the election of the candidate or for prejudicially affecting the election of any candidate. The first part in terms makes it a condition that the appeal is made by a candidate or his agent or any other person with the consent of the candidate or his agent. There is no reference in the second part to the person by whom the use of, or appeal to, the religious or the national symbols, such as the national flag or the national emblem may be made, if such use of or appeal to them has been made to further the prospects of the election of the candidate or to prejudicially affect the election of any candidate. But it is implicit in s. 123(3), having regard to the terms of s. 100, that the use of or appeal to the national or religious symbols must be made by the candidate or his election agent or by some other person with the consent of the candidate or his election agent, before it can be regarded as a ground for declaring the election void. If the evidence on the record fails to establish

the responsibility for the use of or appeal to the religious or national symbols by the returned candidate or by his election agent or by any other person with his consent or his election agent, no ground for setting aside the election may be deemed to be made out.

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The first question to which we must then turn is, whether the "Om flag" can be regarded as a "religious symbol" within the meaning of s. 123(3). This question has to be examined in two branches—(i) whether the word "Om" has any special religious significance, and, (ii) whether the use of "Om" on a flag or pennant makes it a religious symbol. If the respondent Daulta establishes that the "Om flag" is a religious symbol, the question will arise whether the use of or appeal to the Om flag was made in the election campaign for furtherance of his prospects by Sidhanti or by his agents or other persons with his consent or the consent of his election agent.

The expression "Om" is respected by the Hindus generally and has a special significance in the Hindu scriptures. It is recited at the commencement of the recitations of Hindu religious works. Macdonell in his *A Practical Sanskrit Dictionary* states that "Om" is the sacred syllable used in invocations, at the commencement of prayers, at the beginning and the end of Vedic recitation, and as a respectful salutation: it is a subject of many mystical speculations. In the *Sanskrit-English Dictionary* by Monier-William it is said that "Om" is a sacred exclamation which may be uttered at the beginning and end of a reading of the Vedas or previously to any prayer; it is also regarded as a particle of auspicious salutation. But it is difficult to regard "Om" which is a preliminary to an incantation or to religious books as having religious significance. "Om" it may be admitted is regarded as having high spiritual or mystical efficacy: it is used at the commencement of the recitations of religious prayers. But the attribute of spiritual significance will not necessarily impart to its use on a flag the character of a religious symbol in the context in which the expression religious symbol occurs in the section with which we are concerned. A symbol stands for or represents something material or abstract. In order to be a religious symbol, there must be a visible

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representation of a thing or concept which is religious. To 'Om' high spiritual or mystical efficacy is undoubtedly ascribed; but its use on a flag does not symbolise religion, or anything religious.

It is not easy therefore to see how the Om flag which merely is a pennant on which is printed the word 'Om' can be called a religious symbol. But assuming that the Om flag may be regarded as a religious symbol, the evidence on the record is not sufficient to establish that by Sidhanti, his election agents or any other person with his consent or the consent of his election agent, Om flag was used or exhibited, or an appeal was made by the use of the Om flag to further the prospects of Sidhanti at the election.

It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches *i.e.* the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail. The evidence may be examined bearing this approach to the evidence in mind.

Between the months of December 10, 1961 and February 18, 1962, fourteen meetings were held in the constituency as a part of the election campaign of Sidhanti. These meetings were held at Beri, Barhana, Dighal, Akheri Madanpur, Sampla, Ladpur, Majra Dubaldhan, Pakasma, Assaudha, Jhajjar, Badli, Dulehra, Sisana and Bahadurgarh. There was, it is claimed by the applicant, one more meeting on February 4, 1962, at Rohtak town which is outside the Jhajjar constituency. The Tribunal held that the evidence was not sufficient to prove that in the meetings at Beri, Barhana, Dighal, Sampla, Ladpur, Pakasma, Assaudha, Jhajjar, Badli, Dulehra, Sisana and Bahadurgarh 'Om' flag was exhibited in furtherance of the election prospects of Sidhanti and with that view the High Court has agreed. The Tribunal

also held that there was no reliable evidence that at Majra Dubaldhan on January 19, 1962, and at Rohtak town on February 4, 1962, 'Om' flag was used as a religious symbol. On this part of the case, however, the High Court disagreed with the Tribunal. Rohtak town was not, but Rohtak suburban area was, within the constituency in which Daulta and Sidhanti were contesting the election. Therefore the only meeting which took place within the constituency where Sidhanti and Daulta contested the election in which according to the High Court the Om flag was used was at Majra Dubaldhan held on January 19, 1962. Six witnesses directly spoke about the details of that meeting, beside Sidhanti. Sidhanti said generally that the evidence given by the witnesses for Daulta regarding what transpired at Majra Dubaldhan and three other meetings was not true. The witnesses for Daulta were Roop Ram, Sukhi Ram and Ramdhari Balmiki. The witnesses who supported the case of the appellant were Piare Lal, Prof. Sher Singh and Jug Lal. It may be observed that the High Court placed no reliance upon the testimony of Ramdhari Balmiki and no arguments have been advanced before us suggesting that his testimony was reliable. Roop Ram—a police constable—has deposed that about mid-day on January 19, 1962, a meeting was held at Majra Dubaldhan and that at that meeting Piare Lal sang a *bhajan* about the Om flag and he saw the Om flag flying on the *pandal* of the meeting which was attended by four to five thousand persons. According to the witness Nanhu Ram, Badlu Ram, Jagdev Singh Sidhanti, Bhagwan Dev, Ramdhani Balmiki, Attar Singh, Prof. Sher Singh and Acharya Bhagwan Dev made speeches, that Acharya Bhagwan Dev in the course of his speech asked people not to vote for Daulta but to vote for the candidate who was seeking election on the Haryana Lok Samiti ticket. In cross-examination he admitted that he had been supplied with a copy of the report which he had made to the D.I.G., C.I.D., Chandigarh, and that he had gone through the report two or three times, before he gave evidence. The Tribunal refused to place reliance upon the testimony of this witness and of another police constable Ganesh Dass who claimed to have remained present in the various political meetings. It appears that the witness had memorised the so-called reports and the same were not made available to counsel for Sidhanti

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to challenge the truth of the statements made by the witnesses. The High Court has not given any adequate reasons for accepting the testimony of the witness, when the Tribunal which had opportunity of seeing the witness and noting his demeanour had refused to accept the testimony.

Sukhi Ram deposed that he was a sarpanch of Dubaldhan Panchayat for about two years, and that he was present at the meeting convened by the Haryana Lok Samiti on January 19, 1962, for canvassing votes for the candidates of Haryana Lok Samiti, that Prof. Sher Singh and Sidhanti came in a jeep on which there was flying flag with 'Om' inscribed thereon, that he saw several other vehicles flying the Om flag and that the vehicle in which he went to the meeting also was carrying the Om flag. The Tribunal was of the view that the facts elicited in the cross-examination of this witness disclosed that his recollection about other meetings which he had attended was poor, whereas his recollection about the meeting held at Majra Dubaldhan was very clear, and that the reasons given by the witness for specially remembering the details of the proceedings of the meeting in Majra Dubaldhan and not of other meetings could not be accepted. In the view of the Tribunal the witness was interested in Daulta, and this inference was supported by the fact that Daulta had sent him a copy of his election petition before it was even presented to the Election Commission. It also appears that the evidence given by this witness was inconsistent with the summary of the meeting given in Sch. 'D' to the petition and for this reason according to the Tribunal the testimony of the witness "did not carry conviction" and "it was not safe to rely upon it". The High Court after summarising the effect of the evidence observed that it did not appear from the deposition given by the witness that he was in any manner interested in Daulta. In so observing the High Court appears unfortunately to have lost sight of the grounds given by the Tribunal.

Witness Piare Lal stated that he was present at the meeting held at Majra Dubaldhan and that none of the speakers suggested that the electors should vote on the ground of caste, creed, religion or language. He also stated that at

none of the meetings there was any Om flag either inside or outside the *pandal* of the meetings. Prof. Sher Singh who was another witness examined on behalf of Sidhanti deposed that slogans shouted in the meetings were political slogans and that he did not see Om flags in any *pandal* of the meetings, and that he had instructed all the candidates and the members of the Haryana Lok Samiti not to use any flag or symbol other than the symbol allotted to them. Jug Lal, another witness examined on behalf of Sidhanti, stated that at the meeting at Majra Dubaldhan on January 19, 1962, there were no Om flags to be seen anywhere either inside or outside the meeting and that there were no Om flags flying on any of the vehicles. The testimony of the witnesses Piare Lal, Prof. Sher Singh and Jug Lal was discarded by the High Court, because in their view the witnesses were interested in Sidhanti. Even if this view about the evidence of these three witnesses is accepted, the evidence led on behalf of Daulta of witnesses Sukhi Ram, Ramdhari Balmiki is wholly unreliable and the testimony of police constable Roop Ram is also not such that implicit reliance can be placed upon it. We are unable, therefore, to agree with the High Court in the conclusion it has reached that it had been proved satisfactorily that Om flag was flown at Majra Dubaldhan where Sidhanti and other speakers delivered speeches in furtherance of the election campaign.

The only other meeting at which it is found by the High Court that the Om flag was used in the meeting at Rohtak town on February 4, 1962, which town, it is common ground, is not within the Jhajjar parliamentary constituency from which Sidhanti and Daulta were contesting the election. It is, however, said that Rohtak suburban area is within the Jhajjar parliamentary constituency and as there is a grain market in Rohtak town and a large number of voters from the Jhajjar constituency assemble in that town a meeting was held by Sidhanti in which Om flag were exhibited. The witnesses in support of the case of Daulta are Ram Nath Sapra, Dafedar Singh, K. K. Katyal and Satyavrat Bedi. The principal witnesses who were examined by Sidhanti in respect of this meeting were Piare Lal, Bharat Singh, Budh Dev, Prof. Sher Singh and Bhagwan Dev.

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Ram Nath Sapra who is a correspondent of several newspapers deposed that he had attended the meeting at Rohtak town at *Anaj Mandi* 10 or 12 days before the actual polling. According to the witness there was a big procession taken out before the meeting which carried flags either of the symbol of the 'Rising Sun' or of 'Om', that he had made reports about the proceedings of the Rohtak meeting and had sent the report of the same to all the five papers of which he was the correspondent. The Tribunal was of the view that the testimony of the witness was unreliable, because he did not remember the details of any other meeting convened by the other parties, and that he could not speak about the names of the speakers who took part in the meeting convened by the Haryana Lok Samiti. The testimony of the witness therefore was "far from convincing" and the testimony of Sidhanti, Piare Lal, Bharat Singh, Budh Dev, Prof. Sher Singh and Bhagwan Dev was more reliable. In coming to the conclusion that the evidence of the witness was unreliable the Tribunal referred to the details given in Sch. 'D' annexed to the petition under the heading 'Summary of the meetings' and observed that the summary was at "complete variance" with the testimony of the witness. The High Court was of the view that the witness Ram Sapra was "wholly disinterested" and therefore his evidence must be accepted. The High Court did not refer to the infirmities disclosed in the testimony of the witness, particularly the discrepancies between the statement of Daulta in his petition and the testimony given by this witness.

Witness Dafedar Singh who is a police constable said that he had been deputed to report about the proceedings of the meeting. His version is, also different from the version as given in Sch. 'D' annexed to the petition. The High Court has not referred to the testimony of this witness in support of its conclusion and nothing more need be said about him.

K. K. Katyal said that he had attended the meeting at Rohtak town as a special correspondent of the *Hindustan Times*, Delhi and that he recollected that flags with a symbol of 'Om' inscribed thereon were seen flying on some

vehicles but it was not possible for him to say who owned those vehicles, but from the flags and placards carried on the vehicles it appeared that they were of the Haryana Lok Samiti. He also deposed that he had gone to the office of the Haryana Lok Samiti at Rohtak and saw a similar flag flying on the building of the office. He admitted in cross-examination that he did not visit any office of the Haryana Lok Samiti either at Bahadurgarh or at Sampla as all his attention was confined to the central office of the Haryana Lok Samiti at Rohtak. He also stated that he had seen some shopkeepers in Sampla and Bahadurgarh flying Om flags on their stalls. In the view of the Tribunal the testimony of this witness was vague and no reliance could be placed thereon. While generally agreeing with this view, the High Court observed that the testimony of the witness Katyal that the Om flag was flying at the office of the Haryana Lok Samiti at Rohtak which was the headquarters office and in the procession which was led by Bharat Singh a number of Om flags were seen may be accepted.

Satyavrat Bedi who is staff correspondent of the *Indian Express* stated that during his survey of the election campaign he visited Sampla, Bahadurgarh and Rohtak in one day, and made his report about his observations to the newspaper *Indian Express*, in which he had recorded that religious symbols and religion were being frequently used for damaging the chances of success of Daulta, that he had seen a large number of flags fluttering on many house tops, that the flag on the office of the Haryana Lok Samiti was that of Om and the other organisations had their own flags, that he saw the Om flag fluttering on the office of Sidhanti at Sampla but he did not remember whether there was any flag of 'Om' at his election office at Bahadurgarh. The Tribunal declined to accept this testimony. The High Court took a different view and observed that apart from any other infirmity regarding the use of the reports made by the witness, the statement made by him about his observation that he had seen the Om flag flying on the office of the Haryana Lok Samiti and on the motor-vehicle of Bharat Singh could not be ruled out. It must be remembered however that we are concerned at this stage with the

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question whether in the meeting at Rohtak on February 4, 1962. Om flags were exhibited. On that part of the case the evidence of Satyavrat Bedi is not of much use.

Sri Ram Sharma was a candidate for election on behalf of a political party called "the Hariana Front". He deposed that he had never attended any procession or meeting organised by the Hariana Lok Samiti but he had seen the motor-vehicles employed by the Hariana Lok Samiti carrying Om flags which were used by the candidates of the Hariana Lok Samiti. He stated that he contributed a number of articles to Hariana Tilak, Rohtak, founded by him in which he had published on January 4, 1962, an article condemning the use of the Om flag for the purpose of elections. The article published on January 4, 1962, can have no bearing on the use of the flag at Rohtak in the meeting dated February 4, 1962. The High Court did not place any reliance upon the testimony of this witness.

This is all the evidence on behalf of Daulta to which our attention was invited by counsel for the parties that at the meeting at Rohtak on February 4, 1962, Om flags were exhibited and appeals were made to the flag as a religious symbol. Apart from the general infirmity of the testimony, the Tribunal refused to accept the evidence of the witnesses on the ground that their statements considerably departed from the summary given in Sch. 'D' by the petitioner Daulta himself. In view of this inconsistency between the evidence given in Court and the allegations made by the applicant Daulta in the petition, it would be difficult, after discarding the evidence with regard to a very large number of meetings, to hold that in the meeting at Majra Dubaldhan which was within the constituency and in the meeting at Rohtak town which was outside the constituency, Om flags were displayed or appeals were made in the name of the Om flag to further the prospects of the election of Sidhanti. We are, therefore, unable to agree with the conclusion of the High Court that the Om flag was used for election purposes at the time when election speeches were delivered by Sidhanti at Majra Dubaldhan or Rohtak town or that the Om flag was used on the *pandals* at those meetings.

Two other matters which have a bearing on the use of the Om flag in the course of the election campaign by Sidhanti, and on which the High Court has relied may be referred to. The High Court has found that Sidhanti used the office of the Haryana Lok Samiti at Rohtak town as his election office, but on this part of the case our attention has not been invited to any definite evidence which directly supports this conclusion. The High Court merely observed that it was common ground that Sidhanti did not have any office of his own at Rohtak, and inferred from that circumstance that Sidhanti was using the office of the Haryana Lok Samiti for the election campaign. But the inference is in the face of the evidence not justifiable, especially when Rohtak town was not within the constituency.

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It was conceded by Sidhanti that Bhagwan Dev Sharma an Arya Samaj leader had been accustomed for many years past to carry on his motor-vehicle a pennant bearing the Om mark and his name. Witness Bhagwan Dev Sharma stated that he had attended the meetings of the Haryana Lok Samiti and had addressed them because he agreed with their ideology and thought that the institution was for the benefit of the Hindu religion, that he had never been asked to remove the Om flag from his jeep when he reached those meetings and that he had not attended those meetings either on account of Prof. Sher Singh or Sidhanti but "in his independent capacity as a citizen of India having a right to vote", and that he approved of the candidature of Sidhanti in preference to that of his opponent. But if the witness was accustomed to use a pennant with Om mark on it for many years past, in the absence of clear evidence to show that he was an agent of Sidhanti or that he acted with the consent of Sidhanti and made an appeal to the flag, it would be difficult to hold from the circumstances that during the days of the election campaign the witness did not remove the flag from the motor-vehicle, that Sidhanti made an appeal to the electorate by using a religious symbol to further his prospects at the election. The evidence about the user of the Om flag by Bharat Singh when he is alleged to have taken out a procession does not appear to be reliable.

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On a careful survey of the testimony of the witnesses we are unable to agree with the conclusions recorded by the High Court that:

- (a) Sidhanti "had used an office of the Hariana Lok Samiti on which the "Om flag" was flying for election purposes and further that he gave election speeches at a *pandal* where the Om flag was fluttering in furtherance of his prospects at the election";
- (b) "the agents and supporters delivered speeches about the "Om flag" at the meeting held at Majra Dubaldhan on January 19, 1962, that Piare Lal Bhajnik sang a song, the purport of which was that the honour of the Om flag should be upheld"; and
- (c) "the Hariana Lok Samiti, the party to which Sidhanti belonged, was using the Om flag for the purpose of election campaign",

and thereby committed corrupt practices. It is true that the use of the Om flag by Bhagwan Dev on his conveyance is admitted but that again is for reasons already set out not sufficient to enable the Court to hold that it was for the purpose of furthering the prospects of election of Sidhanti.

In considering whether appeals were made to the electorate to vote for Sidhanti on the ground of his language or to refrain from voting for Daulta on the ground of Daulta's language, it is necessary in the first instance to ascertain the true meaning of the expression "on the ground of his language". By s. 123(3) which was introduced for the first time in its present form by Act 40 of 1961, appeal by a candidate or his agent to vote or refrain from voting for a person on the ground of language is made a corrupt practice. This clause must be read in the light of the fundamental right which is guaranteed by Art. 29(1) of the Constitution, for in ascertaining the true meaning of the corrupt practice, the area of the fundamental right of citizen must be steadily kept in view. The clause cannot be so read as trespassing upon that fundamental right. Art. 29(1) provides:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct

language, script or culture of its own shall have the right to conserve the same.”

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The Constitution has thereby conferred the right, among others, to conserve their language upon the citizens of India. Right to conserve the language of the citizens includes the right to agitate for the protection of the language. Political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of s. 123(3) of the Representation of the People Act. That is clear from the phraseology used in s. 123(3) which appears to have been deliberately and carefully chosen. Unlike Art. 19(1), Art. 29(1) is not subject to any reasonable restrictions. The right conferred upon the section of the citizens residing in the territory of India or any part thereof to conserve their language, script or culture is made by the Constitution absolute and therefore the decision of this Court in *Jumuna Prasad Mukhariya and others v. Lachhi Ram and others*⁽¹⁾ on which reliance was placed by the High Court is not of much use. In that case ss. 123(3) and 124(5) of the Representation of the People Act as they then stood were challenged as infringing the fundamental freedom under Art. 19(1)(a) of the Constitution, and the Court in negating the contention held that the provisions of the Representation of the People Act did not stop a man from speaking: they merely prescribed conditions which must be observed if a candidate wanted to enter Parliament. The right to stand for an election is, it was observed, a special right created by statute and can only be exercised on the conditions laid down by the statute, and if a person wants to stand for an election he must observe the rules. These observations have no relevance to the protection of the fundamental right to conserve language. The corrupt practice defined by cl. (3) of s. 123 is committed when an appeal is made either to vote or refrain from voting on the ground of a candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to *his* language which attracts the ban of s. 100 read with s. 123(3). Therefore it is only when the electors are asked to vote or not to vote because of the

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particular language of the candidate that a corrupt practice may be deemed to be committed. Where however for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice.

It is in the light of these principles, the correctness of the findings of the High Court that Sidhanti was guilty of the corrupt practice of appealing for votes on the ground of his language and of asking the voters to refrain from voting for Daulta on the ground of the language of Daulta may be examined. The petition filed by Daulta on this part of the case was vague. In paragraph 11 of his petition it was averred that Sidhanti and his agents made a systematic appeal to the audience to vote for Sidhanti and refrain from voting for Daulta "on the ground of religion and language", and in paragraph 12 it was averred that in the public meetings held to further the prospects of Sidhanti in the election, Sidhanti and his agents had made systematic appeals to the electorate to vote for him and refrain from voting for Daulta "on the ground of his religion and language". A bare perusal of the particulars of the corrupt practice so set out in paragraphs 11 & 12 are to be found in Schs. 'C' & 'D' clearly shows that it was the case of Daulta that Sidhanti had said that if the electorate wanted to protect their language they should vote for the Haryana Lok Samiti candidate. Similar exhortations are said to have been made by the other speakers at the various meetings. It is stated in Sch. 'D' that resolutions were passed at the meetings urging upon the Government to "abolish Punjabi from Haryana", that many speakers said that the Haryana Lok Samiti will fight for Hindi for Haryana and that they were opposed to the teaching of Punjabi in Haryana. These exhortations to the electorate to induce the Government to change their language policy or that a political party will agitate for the protection of the language spoken by the residents of the Haryana area do not fall within the corrupt practices of appealing for votes on the ground of language of the candidate or to refrain from voting on the ground of language of the contesting candidate.

Speeches made at political meetings held for canvassing votes must be examined in the context of the atmosphere of a political campaign and the passions which are generally aroused in such a campaign. In adjudging whether an appeal is made to the language of the candidate, a meticulous examination of the text of the speech in the serene atmosphere of the Court room picking out a word here and a phrase there to make out an offending appeal to vote for or against a candidate on the ground of language would not be permissible. A general and overall picture of the speeches delivered by Sidhanti and other speakers at the meeting disclosed nothing more than a tale of political promises, exhortations and inducements to vote at the forthcoming election for Sidhanti.

It is not disputed that in 1957 there was a wide-spread agitation in the State of Punjab against the enforcement of the education policy of the State, incorporated in the "Sachar formula". Many persons were imprisoned or detained in the cause of the agitation for individual acts done by them. But the movement was not and could not be declared illegal. It is common ground that in the Haryana region, Hindi is the predominant language of the people and if a section of the people thought that compelling the students in the Haryana region to learn Punjabi was not in their interest and in the election campaign such a view was advocated and votes were canvassed on the promise that the candidate if elected will take steps to conserve the language of the region, it would be difficult to hold that appeal as amounting to a corrupt practice. It is open to a candidate in the course of his election campaign to criticise the policies of the Government including its language policy and to make promises to the electorate that if elected he will secure a reversal of that policy or will take measures in the Legislature to undo the danger, real, apprehended or even fancied, to the language of the people. The object of the Haryana Lok Samiti was evidently to resist the imposition of Punjabi in the Haryana region and that object appears to have been made the platform in the election campaign. Thereby it could not be said that the voters were asked not to vote for Daulta on the ground of his language, assuming that it was other than

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Hindi. Nor can it be said that it was an appeal to the voters to vote for Sidhanti on the ground of his language.

The evidence which has been referred to by the High Court regarding the speeches made by Badlu Ram and Harphul Singh on December 10, 1961, at Beri on the face of it shows that the speeches were an attack against Daulta in respect of his political conduct, behaviour and beliefs. The speeches made at the meetings at Sampla, Ladpur and Majra Dubaldhan read like political harangues addressed to the electorate to vote for the candidate who would protect the language of the people of Haryana. At Bahadurgarh also Sidhanti is stated to have claimed that he was opposed to the Government and its supporter Daulta in the matter of the language movement. The evidence also showed that Sidhanti had appealed to the voters to vote for him because he was actively associated with the Hindi agitation movement and that he was championing the cause of Hindi and resisting the imposition of a rival language Punjabi and thereby suggesting that Daulta was hostile to the cause of Hindi language and was supporting the Punjabi language. The criticism by Sidhanti in his appeal to the electorate related to the political leanings of Daulta, and his support to the policy of the Government and was not personally directed against him. Nor did Sidhanti appeal to the voters to vote in his favour on account of his language. Such political speeches espousing the cause of a particular language and making promises or asking the people to protest against the Government of the day in respect of its language policy is not a corrupt practice within the description of corrupt practice under s. 123(3) of the Act.

We are therefore unable to agree with the High Court that Sidhanti was guilty of any corrupt practice under s. 123(3) by appealing for votes on the ground of his language or by asking the voters to refrain from voting for Daulta on the ground of his language.

The appeal will therefore be allowed and the order passed by the Tribunal restored with costs in this Court and the High Court.

Appeal allowed.