Can’t seek votes in name of Religion, Caste: Supreme Court

Why in news?

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The Supreme Court ruled that “religion, race, caste, community or language would not be allowed to play any role in the electoral process”. The election of a candidate would be declared null and void if an appeal is made to seek votes on these considerations.

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What is Section 123 of RPA?

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- Section 123(3) of the Act defines as “corrupt practice” appeals made by a candidate or his agents to vote or refrain from voting for any person on the ground of “his” religion, race, caste, community or language.
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- What came up for interpretation before the Constitution Bench was the meaning of the term “his” since that would define whose religion it has to be when an appeal is made.
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- Previous judgments handed out conflicting views and hence the question came up before the seven judges.
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What was the judgment?

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- In *Abhiram Singh v C.D. Commachen* by a 4-3 majority ruling, a seven-judge Constitution Bench held that an election will be annulled if votes are sought in the name of the religion of the candidate.
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- The majority view interpreted Section 123(3) of the Representation of the People Act to mean that this provision was laid down with an intent “to

clearly proscribe appeals based on sectarian, linguistic or caste considerations".
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- The majority view ruled in favour of a purposive interpretation, stating that "his" would mean **religion of candidate, his agents, voters as well as any other person** who, with the candidate's consent, brings up religion in an appeal for the furtherance of the prospects of the election.
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- The elections will also be annulled when such an appeal hinges on religion of voters or candidate's election agents or by anybody else with the consent of the candidate.
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- The "anybody else" will include **religious and spiritual leaders**, often engaged by candidates to mobilise their followers.
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- "An appeal in the name of religion, race, caste, community or language is **impermissible** under the RPA, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate's religion or the religion of the election agent or that of the opponent or that of the voter's," the majority judges ruled.
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What was the dissenting view?

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- Three judges dissented with the majority view, holding that the expression "his" used in conjunction with religion, race, caste, community or language is in reference to the **candidate or that of a rival candidate**.
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- "To hold that a person who seeks to contest an election is prohibited from speaking of the legitimate concerns of citizens that the injustices faced by them on the basis of traits having an origin in religion, race, caste, community or language would be remedied is to reduce democracy to an abstraction,"
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- The dissenting view stated that "his" in Section 123(3) cannot validly refer to the religion, race, caste, community or language of the voter.
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What is the majority view?

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- The State being secular in character will not identify itself with any one of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature.
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- The elections to the State legislature or to the Parliament or any other body in the State **is a secular exercise**.
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- The Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State and that religion remains a matter personal to the individual with which neither the State nor any other individual has anything to do.
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- The concerns under Section 123(3) of the Act have increased with the tremendous reach already available to a candidate through the print and electronic media none of which were seriously contemplated till about fifteen years ago.
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- Therefore now it is necessary to ensure that the provisions of sub-section (3) of Section 123 of the Act **are not exploited by a candidate** or anyone on his behalf by making an appeal on the ground of religion.
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- So Section 123(3) has to be interpreted in a manner that leaves no scope for any sectarian caste or language-based appeal.
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What was the shortcoming?

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- The bench, however, refrained from revisiting its 1995 judgment on whether the words “Hindutva” and “Hinduism” connote the “way of life” of the Indian people and not just Hindu religious practices.
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- According to this three-judge bench judgment of 1995, an appeal in the name of ‘Hindutva’ to seek votes was not a corrupt practice warranting disqualification of a candidate as it was ‘a way of life’ and not a religion.
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- Since this judgment also formed the clutch of matters being examined by the seven judges, the issue regarding revisiting the meaning of “Hindutva” and “Hinduism” also came up but the Constitution Bench judgment Monday remained silent on it.
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