A MOHD. ASLAM

v.

UNION OF INDIA AND ORS.

MARCH 22, 1996

B [J.S. VERMA, N.P. SINGH AND K. VENKATASWAMI, JJ.]

Constitution of India, 1950 :

Article 32—Writ petition filed for reconsideration of an earlier judg-
C *ment—Held, Article 32 is not available to assail the correctness of a decision on merits or to claim its reconsideration.*

Representation of the People Act, 1951.

S. 123(3), (3-A)—Corrupt practice—Writ Petition filed to reconsider the
D *judgment of this Court in Manohar Joshi's case—Held, not maintainable—The apprehensions and misgivings expressed in the writ petition are imaginary and baseless—There is no occasion to read in the judgment in Manohar Joshi, something which is not said or to say that it conflicts with concept of secularism in S.R. Bommai where the question relating to the*
E *meaning of sub-sections (3) and (3-A) of s.123 neither arose nor was decided.*

Khoday Distilleries Limited & Anr. **v.** *The Registrar General, Supreme Court of India,* **(1995) 6 Scale 742, followed.**

Manohar Joshi **v.** *Nitin Bhaurao Patil and Another,* **[1996] 1 SCC 169,**
F **explained.**

A.R. Antulay **v.** *R.S. Nayak & Anr.,* **[1988] Suppl. 1 SCR 1,** *S.R. Bommai and Others* **v.** *Union of India and Others,* **[1994] 3 SCC 1,** *Jamaat-E-Islami Hind* **v.** *Union of India,* **[1995] 1 SCC 428,** *Dr. Ramesh Yeshwant Prabhoo* **v.** *Shri Prabhakar Kashinath Kunte & Others,* **[1996] 1 SCC 130,**
G *Shri Suryakant Venkatrao Mahadik* **v.** *Smt. Saroj Sandesh Naik (Bhosale),* **[1996] 1 SCC 384 and** *Mohan* **v.** *Bhairon Singh Shekhawat,* **(1996) 1 Scale SP 3, referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 135 of
H 1996.

(Under Article 32 of the Constitution of India.) A

Dr. Rajiv Dhawan and M.M. Kashyap for the Petitioner.

O.P. Sharma for the Respondents.

Danial Lalifi, Avikar Ray, Akhtar Hussain and Ms. Nanita Sharma for the Intervenors. B

The following Order of the Court was delivered :

The prayer in this writ petition under Article 32 of the Constitution of India is for reconsideration of the Judgment in *Manohar Joshi* v. *Nitin Bhaurao Patil and Another,* [1996] 1 SCC 169. The petitioner's contention, in substance, is that the judgment is incorrect. C

It is sufficient to say that Article 32 of the Constitution is not available to assail the correctness of a decision on merits or to claim its reconsideration. This has been clearly reiterated in the recent decision in *Khoday Distilleries Limited & Anr. v. The Registrar General, Supreme Court of India,* (1995) 6 Scale 742, wherein the decision in *A.R. Antulay* v. *R.S. Nayak & Anr.,* [1988] Supp.1 SCR 1, has been explained. This alone is sufficient to dismiss the writ petition. D

However, in view of certain apprehensions expressed by the petitioner, we deem it proper to make some further observations now, which we had considered unnecessary to incorporate in the judgment in *Manohar Joshi*. We may observe that the decision of this Court in *S.R. Bommai and Others.* v. *Union of India and Others,* [1994] 3 SCC 1, did not relate to the construction of, and determination of the scope of sub-sections (3) and (3A) of Section 123 of the Representation of the People Act, 1951 and, therefore, nothing in the decision in *S.R. Bommai* is of assistance for construing the meaning and scope of sub-sections (3) and (3A) of Section 123 of the Representation of the People Act. Reference to the decision in *S.R. Bommai* is, therefore, inapposite in this context. E F

We may also add that the challenge in the writ petition to the correctness of the decision in *Manohar Joshi* is based on a misreading of that decision. In the judgment, the decision on the question of law is based on earlier Constitution Bench decisions of this Court by which we are bound; and the observation therein which is challenged as incorrect in this writ petition, is not the basis of the decision but an opinion expressed on G H

A an assumption if the making of the alleged statement of the hope of Maharashtra becoming a Hindu State, in the speech is held to be proved, without recording a finding that it was so proved. This allegation was based on a police report and Manohar Joshi did not admit the making of such a statement in his speech. Moreover, strong disapproval was expressed of such a statement, if actually made. This is clear particularly from paras 62 B to 67 of the decision in *Manohar Joshi* reported in [1996] 1 SCC 169. Specific reference has been made for this purpose in paras 64 to 67 (SCC) to the decision in *Jamaat-E-Islami Hind* v. *Union of India,* [1995] 1 SCC 428, to indicate the standard of proof required for proving a corrupt practice which had not been satisfied in *Manohar Joshi* in view of the C absence of legal evidence to prove the corrupt practice alleged in the case.

A careful and dispassionate reading of the decision would show that the apprehensions and misgivings expressed in the writ petition, are imaginary and baseless. There is no occasion to read in the judgment in *Manohar* D *Joshi,* something which is not said or to say that it conflicts with the concept of secularism in *S.R. Bommai* where this question relating to the meaning of sub-sections (3) and (3A) of Section 123 of the Representation of the People Act neither arose, nor was decided. The application of the decision in *Manohar Joshi* in cases like *Dr. Ramesh Yeshwant Prabhoo* v. *Shri Prabhakar Kashinath Kunte & Others,* [1996] 1 SCC 130, *Shri Suryakant* E *Venkatrao Mahadik* v. *Smt. Saroj Sandesh Naik (Bhosale),* [1996] 1 SCC 384, and *Mohan* v. *Bhairon Singh Shekhawat,* (1996) 1 Scale SP 3, is another pointer to indicate that there is nothing in the judgment in *Manohar Joshi* to give rise to any such apprehension that it can enable misuse of religion for making an appeal for votes in an election.

F We may add that the deficiency, if any, in the statutory prohibition enacting the corrupt practice in Section 123 of the Representation of the People Act, has to be cured by legislation and that deficiency cannot be cured by reading into a penal provision something which is not enacted therein. The proposal was made at one time to perform the legislative G exercise of enacting a provision to prevent any possible misuse of religion during elections, but it was, unfortunately, abandoned. We do hope that at least now there would remain no misapprehension in the mind of anyone.

The writ petition is, therefore, dismissed.

R.P. Petition dismissed.