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May 20.

SHRI V. V. GIRI

v.

DIPPALA SURI DORA AND OTHERS

(B. P. SINHA, JAFER IMAM, J. L. KAPUR, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Election—Double member constituency—Reserved seat—Scheduled Tribe candidate for reserved seat, if can be declared elected to general seat—Provisions permitting such course, whether ultra vires—Hindu Law—Member of Scheduled Tribe or Caste—When can attain higher caste—Representation of the People Act, 1951 (43 of 1951), s. 54(4)—Delimitation Commission Act, 1952 (81 of 1952). s. 8.

In a double member Parliamentary constituency one seat was reserved for the scheduled tribes and the other was general. Four persons filed their nominations for the election, G 1 and G 2 for the general seat and S1 and S2 for the reserved seat. At the polls the number of votes received by the candidates were in the following order: S1, S2, G1 and G2. In accordance with the provisions of s. 54(4) of the Representation of the People Act, 1951, S1 was declared elected to the reserved seat and S2, who had received the largest number of votes out of the remaining candidates, was declared elected to the general seat. G1 filed an election petition for a declaration that the election of S2 was void and for a further declaration that he had himself been duly elected to the general seat. The petition was based on three grounds, viz., (i) that upon a proper interpretation of s. 54(4) a candidate who had filed his nomination for the reserved seat could not be declared elected to the general seat; (ii) that if the interpretation be otherwise then s. 54(4) was *ultra vires*; and (iii) that S2 had ceased to be a member of a scheduled tribe at the relevant time and his nomination was improperly accepted.

Held, (Kapur, J., dissenting) that, S2 was properly and validly declared elected. The provisions of the Constitution and of the Act show that the election in a double member constituency was held for the whole constituency and not for the seats and a candidate who had filed nomination as a member of the scheduled tribes was entitled to contest for both the seats. On a fair and reasonable construction of s. 54(4) of the Act there could be no doubt that in a case like the present, after S1 was declared duly elected to the reserved seat, the votes secured by the remaining three candidates had to be considered before declaring the election for the general seat. A member of the scheduled tribe or caste did not forego his right to seek election to the general seat merely because he availed himself of the additional concession of standing for the reserved seat by making the prescribed declaration for that purpose. It was not necessary for him to file two nomination papers for the two seats.

Section 54(4) of the Act did not offend Art. 14 or Art. 330 of the Constitution and was not unconstitutional.

Held, further, that the appellant had failed to establish that S2 had ceased to be a member of the scheduled tribe and had become a Kshatriya. Whatever may have been the origin of Hindu castes and tribes in ancient times, gradually castes came to be based on birth alone. A person who belonged by birth to a depressed caste or tribe would find it very difficult, if not impossible, to attain the status of a higher caste by virtue of his volition, education, culture and status. The caste status of a person had to be determined in the light of the recognition received by him from the members of the caste into which he sought an entry; unilateral acts of such a person asserting a higher status were not enough to establish the higher status. It is to be hoped that this position will change, and in course of time the cherished ideal of castless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists.

Per Kapur, J.—The election of S2 to the general seat was not valid. When a member of the scheduled tribe or caste offered himself for election to a reserved seat he could be elected only to that seat and not to the general seat. The provisions of the Constitution and of the Act show that the election in a constituency was for filling of a seat in the constituency and not for a constituency. When a candidate offers himself for election in a constituency, he does so for election to fill a seat in the constituency. Therefore, if a candidate wanted to contest both the seats he had to file two nomination papers one for the general seat and the other for the reserved seat and he had to make two deposits. Section 8(2) of the Delimitation Commission Act, 1952 destroyed the effect of s. 54 of the Act.

Caste in Hinduism had its origin not on the basis of birth but of *guna, karma* and *subhavana* (quality, actions and character). Caste is nothing but division of labour. Hinduism might have become static at one time; it is no longer so and it is wrong to say that caste is dependant upon birth and not on *karma* i.e. action. S. 2 had by his actions raised himself to the position of a Kshatriya and he was no longer a member of the scheduled tribe or caste.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 539 of 1958.

Appeal by special leave from the judgment and order dated March 13, 1958 of the Andhra Pradesh High Court in Special Appeal No. 4 of 1957, arising out of the judgment and order dated November 18, 1957,

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of the Election Tribunal, Hyderabad in Election Petition No. 83 of 1957.

N. C. Chatterjee, A. N. Sinha and *T. Satyanarayana*, for the appellant.

P. Rama Reddy and *R. Mahalingaiyer*, for respondent No. 1.

S. S. Shukla, for respondent No. 2.

1959. May 20. The judgment of B. P. Sinha, Jafar Imam, P. B. Ganjendragadkar and K.N. Wanchoo, JJ. was delivered by P. B. Gajendragadkar, J. J. L. Kapur, J. delivered a separate judgment.

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GAJENDRAGADKAR J.—This appeal by special leave arises from an election petition filed by Mr. V. V. Giri (hereinafter called the appellant) in which the validity of the election of Mr. Dippala Suri Dora (hereinafter called respondent 1) was challenged. The Parliamentary Constituency of Parvatipuram in the State of Andhra Pradesh is a double-member constituency; one seat is reserved for the scheduled tribes and the other is general. In the General Election to the House of the People held in 1957 four candidates had been nominated from the said constituency. The appellant and Mr. B. Satyanarayana Dora (hereinafter called respondent 2) were adopted by the Congress Party, while respondent 1 and Mr. V. Krishnamoorthy Naidu (hereinafter called respondent 3) were the candidates of the Socialist Party. For this constituency polling took place between February 25 and March 19, 1957, and the counting of votes disclosed that the appellant and the three respondents had secured 1,24,039, 1,24,604, 1,26,792 and 1,18,968 votes respectively. The result of the election was declared on March 19, 1957. It was announced that respondent 2 had been elected to fill the reserved seat and respondent 1 the general seat. On April 16, 1957, the appellant filed the present election petition No. 83 of 1957 challenging the validity of respondent 1's election. He alleged that respondent 1 had offered himself as a candidate for the reserved seat and as such he was not entitled to be elected for the general seat. In the alternative he urged that

respondent 1 was not a member of the scheduled tribe at the material time and so the declaration made by him in that behalf was false. According to the appellant respondent 1's nomination had, therefore, been improperly accepted and it had materially affected the election. That is why the appellant claimed a two-fold declaration. He wanted the tribunal to declare that the election of respondent 1 under the Representation of the People Act, 1951 (Act 43 of 1951) (hereinafter called the Act) was void and that he had himself been duly elected to the House of the People from the Parvatipuram Parliamentary Constituency for the general and non-reserved seat. These allegations were denied by respondent 1.

Broadly stated the main part of the appellant's case rested on two grounds. He relied on the fact that both the Congress and Socialist Parties had adopted two candidates each, one for the reserved seat and the other for the general seat. Respondent 1 had been adopted for the reserved seat and in the nomination forms filed on his behalf he had made the requisite declaration that he was a member of the scheduled tribe. He conducted his election campaign on the basis that he was a candidate for the reserved seat and the voters must have voted for him on the same basis. If it is found that his rival candidate for the said reserved seat (respondent 2) secured a larger number of votes and so he was declared elected to fill the said seat, it is not open to respondent 1 to claim election for the general seat. If a candidate offers himself for one seat, how can he claim to be elected for the other, asks the appellant.

The appellant concedes that the reservation of seats for the scheduled castes or tribes is a special concession shown to the members of the said castes and tribes in view of the fact that they are educationally socially and financially very backward; it is also conceded that members of the scheduled castes or tribes are entitled to contest election for the general seat; but the argument is that a member of a scheduled tribe must make up his mind and decide which seat he wishes to contest. If he wants to contest the general seat he

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may do so and in that event he should not make the prescribed declarations on his nomination form; on the other hand, if he wants to contest the reserved seat he should elect to do so, make the necessary declaration and then concentrate his attention on the reserved seat. Having once made his election he cannot subsequently fall back upon his right to be elected for the general seat. Thus presented the argument no doubt appears to be plausible and even attractive.

Respondent 1, however, dispute the validity of this contention. His case is that the reservation of seats is intended as an additional and special concession to the scheduled castes or tribes. That, however, does not affect the right of the members of the said castes or tribes to claim along with the other citizens of the country the right to be elected to the general seat. In other words, according to respondent 1, a member of the scheduled tribe is entitled to claim election either to the reserved seat or to the general seat in a double-member constituency, where one seat is reserved for the scheduled tribes or castes. When a member of the scheduled tribe makes a declaration about his status on his nomination form it merely means that he claims the additional benefit of being eligible for election to the reserved seat. If in the fight for the reserved seat his rival candidate defeats him, that cannot detract from, or affect, his right to claim election to the general seat; and if the voters in the constituencies have expressed their confidence in him by putting him at the top amongst the remaining candidates, he is entitled to claim election to the said general seat. The object of reserving seats obviously is to create confidence in the minds of the backward castes and tribes and to give them an assurance about their welfare and future in the political set up of the country. This object necessarily implies that the members of the said castes and tribes should have a double opportunity of seeking election from a double-member constituency.

Respondent 1 does not concede that he contested the election solely for the reserved seat. It is admitted on his behalf that he did make the necessary declaration and he may have brought it to the notice of the voters

that he was a member of the scheduled tribe. That was inevitable since he was claiming to be elected for the reserved seat. It is, however, urged that if in law election took place for the constituency as a whole, and not for separate seats, the fact that his nomination paper referred to "the reserved constituency" and some of his statements during the course of his election campaign mentioned the fact that he was a member of the scheduled tribe would not prejudicially affect his right to claim election for the general seat. Incidentally respondent 1 claimed that the declaration of his election to the general seat in fully consistent with the express provisions of s. 54(4) of the Act, whereas the appellant pleaded in reply that the construction sought to be placed upon the provisions of s. 54(4) by respondent 1 was unreasonable and if not the said provision was *ultra vires*.

On the three major points which thus arose for decision in the present election petition the Election Tribunal at Hyderabad and the High Court of Andhra Pradesh have differed. The Tribunal upheld the appellant's contentions, made the two declarations claimed by him and allowed his election petition with costs. On appeal to the High Court the points made by respondent 1 have been accepted, the findings made by the tribunal and the declarations granted by it have been reversed and the appellant's election petition dismissed with costs throughout. The appellant's application for a certificate was dismissed by the High Court. Thereupon he applied to this Court and obtained special leave to appeal. That is how this appeal has come before us.

What then is the true constitutional and legal position with regard to the election to the House of the People from a double-member constituency where one seat is reserved for the members of the scheduled tribes or castes? The answer to this question would depend upon the effect of the relevant provisions of the Constitution and the Act respectively. Let us first examine the relevant articles of the constitution.

Article 325 provides that there shall be one general electoral roll for every territorial constituency for

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election to either House of Parliament and that no person shall be ineligible for inclusion in any such roll or claim to be included in any such electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them. Article 326 which deals *inter alia* with the elections to the House of the People lays down that the said elections shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 21 years of age at the relevant date and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the grounds specified shall be entitled to be registered as a voter at any such election. It is thus clear that the electoral roll is prepared on a purely secular basis without any reference to religion, race, caste or sex and that the qualification for being included as a voter on the said electoral roll is likewise wholly secular and of general application to all citizens in the country.

Let us then refer to the articles that deal with the composition of the House of the People and qualification for membership of Parliament. Article 81 (1) provides that subject to the provisions of Art. 331 the House of the People shall consist *inter alia* of not more than 500 members chosen by direct election from territorial constituencies in the States. This article contemplates the division of the States into territorial contituencies and it provides for the election of 500 members from these constituencies to the House of the People. Article 84 deals with the question of qualification and it provides that a person shall not be qualified to be chosen to fill a seat in the Parliament unless he is (a) a citizen of India, (b) in the case of a seat in the House of the People not less than 25 years of age, and (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

It is by virtue of Art. 84(c) that the Parliament has passed the two relevant statutes. They are the Representation of the People Act, 1950 (Act 43 of 1950) and the Act. We will presently refer to the relevant provisions of the Act. Meanwhile we would like to

refer to another article of the Constitution which is very important. It is Art. 330. It occurs in Pt. XVI of the Constitution which deals with special provisions relating to certain classes. It provides for the reservation of seats for scheduled castes and scheduled tribes in the House of the People. Article 331 lays down that seats shall be reserved in the House of the People for the three categories enumerated in (a), (b) and (c). In the present case we are concerned with the second category which deals with the scheduled tribes. Article 330(2) provides *inter alia* that the number of seats reserved in any State for the scheduled tribes under sub-Art.(1) shall bear as nearly as may be the same proportion to the total number of seats allotted to that State in the House of the People as the population of the scheduled tribes in the State or part of the State as the case may be in respect of which seats are so reserved bears to the population of the State. In providing for the members of the scheduled tribes the special concession by way of reservation of seats the Constitution has adopted the fair, just and equitable method of fixing the number of the said reserved seats on the basis of the proportion mentioned in Art. 330(2). Whilst we are referring to this article we may incidentally mention Art. 334 which provides that the reservation of seats provided by Art. 330 shall cease to have effect on the expiration of a period of ten years from the commencement of the Constitution subject to the proviso.

Thus it is clear that election to the House of the People even from a double-member constituency where one seat is reserved for the members of the scheduled tribes in *one*, and though the Constitution shows just anxiety to afford necessary protection to the members of the scheduled tribes, it deliberately refused to adopt the system of separate electorates. The constituency is one and election is held to the said constituency from one joint electoral roll prepared on the basis of qualifications which are of general and uniform application. In regard to double-member constituencies like Parvatipuram the Constitution has not even adopted the course of providing for a special constituency

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confined to the members of the scheduled tribe. All that is done is to provide for the reservation of seats for the members of the said tribes or castes in the manner already indicated. Even for the reserved seat all voters in the constituency are entitled to vote. The reservation of a seat in a double-member constituency cannot, therefore, affect the main basic position that the constituency is one and for returning representatives to the House of the People it is the same joint electorate that goes to the poll.

Let us now proceed to consider the position under the relevant provisions of the Act. It is necessary to begin with the definitions of parliamentary constituency and election. Section 2(f) of the Representation of the People Act, 43 of 1950, defines a "parliamentary constitutency" as meaning a constituency provided by law for the purpose of elections to the House of the People; whereas s. 2(d) of the Act defines "election" to mean an election to fill a seat or seats *inter alia* in House of Parliament. These definitions show that it is a parliamentary constituency that sends the representatives to fill the seats in the House of the People. Elections are held from such constituencies and candidates declared duly elected fill the seats in the House of Parliament to which they are elected. Section 4 prescribes qualification for membership of the House of the People. Section 4(b) provides that a person shall not be qualified to be chosen to fill a seat in the House of the People unless in the case of a seat reserved for the scheduled tribes he is a member of any of the scheduled tribes and is an elector for any parliamentary constituency. This section expressly provides what was clearly implicit in the relevant articles of the Constitution that before a person can claim to be elected to fill a seat reserved for the scheduled tribes he must be a member of the said tribes besides being an elector for the parliamentary constituency in question. Section 32 deals with the nomination of candidates for election and it provides that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill a seat under the provisions of the Constitution and the Act. The next section

to consider is s. 33. It deals with the presentation of nomination papers and prescribes the requirements for a valid nomination. Section 33(2) is relevant for our purpose. It provides that any constituency where any seat is reserved a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular tribe of which he is a member and the area in relation to which the tribe is a scheduled tribe of the State. Section 33(6) lays down that nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency. The effect of s. 33(2) is that unless a member of the scheduled tribe makes the required declaration he would not be entitled to claim election to the reserved seat. In other words, if a member of the scheduled tribe does not want to be considered for election to the reserved seat he need not make the said declaration; and in that case he would be entitled to contest the election only for the general seat. But it does not follow that if a scheduled tribe candidate makes the said declaration he forfeits his right to contest for the general seat. It is necessary to point out at this stage that the prescribed nomination paper (Form 24) is common to all the candidates. In regard to the candidates contesting for the reserved seat, however, the form prescribes the declaration which they are required to make. In the matter of deposits required by s. 34 another concession is made in favour of the members of the scheduled castes or tribes; whereas in the case of an election from a parliamentary constituency a candidate is required to make a deposit of Rs. 500 the amount is fixed at Rs. 250 in the case of members of scheduled castes or tribes. It is significant that this concession is not confined to members of the scheduled tribe contesting the election only for the reserved seat. It is available to them even if they want to contest only for the general seat. Section 35 requires a notice of nominations and a time and place for their scrutiny to be published; and s. 38 requires a list of contesting candidates to be published. The two prescribed forms for

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the said notices are Forms 3A and 4; they make no reference to the two respective seats and give the particulars about all the candidates in the respective columns. It is true that in col. (6) of Form 3A particulars of caste or tribe of candidates belonging to scheduled castes or tribes are required to be mentioned. That is consistent with the requirement of s. 33(2). It would thus be seen that the scheme of the relevant provisions of the Act, like the scheme of the relevant articles of the Constitution, is clear. The election to the House of the People from a double-member constituency is held as an election from the whole of the constituency as such. It is on that basis that the nomination papers are required to be filed. The notifications about the nominations are published and the list of the validly nominated candidates is announced on the same basis. The counting of votes is similarly made by reference to all the candidates. It is only when the result of the election is prepared for declaration that the votes of candidates who have made the prescribed declarations are first taken into account and the result of the election in respect of the reserved seat is first determined, and then the votes secured by the remaining candidates are taken into account and the result of the election for the other general seat is determined and declared.

Section 63 of the Act would also assist us in deciding the point in dispute between the parties. Section 63 (1) provides for the method of voting and it lays down that in plural-member constituencies other than Council constituencies every elector shall have as many votes as there are members to be elected but no member shall give more than one vote to any one candidate. It is not disputed that voters in a double-member constituency are not bound to vote in reference to the two seats. If the Act had intended that the election in such a consituency should take place by reference to the two respective seats, it would have provided for voting by the electors on that basis, and would have required the voters to cast their two votes respectively by reference to the two seats. Section 63(1) on the other hand allows voters to cast their two

votes to any two candidates of their choice whether both of them claim to be elected to the general seat or to the reserved seat or one of them claims one seat and other claims the other. This method of voting is inconsistent with the appellant's case that the election to the double-member constituency is held seat-wise.

Section 54(4) emphatically brings out the same position. Section 54 (1) provides that it shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the scheduled castes or scheduled tribes. Sub-section (4) reads thus:—

> "If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, and the total number of contesting candidates also exceeds the total number of seats to be filled, a poll shall be taken; and after the poll has been taken, the returning officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats."

On a fair and a reasonable construction of this provision there can be no doubt that in a case like the present, after respondent 2 was declared duly elected to the reserved seat, the votes secured by the remaining three candidates had to be considered before declaring the election for the unreserved seat and that is precisely what the returning officer has done when he declared that respondent 1 had been duly elected to the said seat. The illustration to this sub-section makes this position absolutely clear. This is how the illustration reads:—

> "At an election in a constituency to fill four seats of which two are reserved there are six contesting candidates A, B, C, D, E and F, and they secure votes in descending order, A securing the largest number, B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F

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are not so qualified. The returning officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats."

In our opinion s. 54(4) and the illustration are wholly consistent with the relevant provisions of the Constitution and of the Act.

Whilst we are dealing with s. 54 we may incidentally refer to the appellant's argument based on s. 6(2)(c) of the Delimitation Commission Act, 1952 (81 of 1952) which provides that in every two-member constituency one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the other seat shall not be so reserved. It is urged that in view of this provision the case contemplated by the illustration to s. 54 (4) is not likely to occur any more and in that sense the illustration has become *otiose*. That may be true. But even so the significance of the illustration lies in the fact that it clarifies and explains concretely how the reservation of seats for the depressed castes and tribes will actually work out in elections in the relevant constituencies.

There is another argument which may be noticed. It was faintly suggested by the appellant that s. 54(4) is *ultra vires* since it is inconsistent with Arts. 14 and 330 of the Constitution. One has merely to recall the provisions of Art. 15 (3) and (4) to reject the argument that s. 54(4) offends against Art. 14. As regards Art 330 it is obvious that the reservation of seats as therein specified is intended to guarantee a minimum number of seats to the scheduled castes and tribes; therefore if members of the said castes and tribes secure additional seats by election to general unreserved seats there would be no repugnancy at all. There is no substance in the contention that s. 54 (4) is *ultra vires*.

There is one more section of the Act to which reference must be made. It is s. 55. For the avoidance of doubt this section declares that a member of the scheduled castes or scheduled tribes shall not be disqualified to hold the seat not reserved for members of those castes or tribes if he is otherwise qualified to

hold such seat under the Constitution and the Act. If the appellant's contention is upheld then the provisions of s. 55 would be inapplicable to a member of the scheduled tribe solely because he has made the prescribed declaration in his nomination form in order to claim the benefit of the concession of the reserved seat in his constituency. We see no justification for adopting such an artificial and restricted construction of s. 55. In our opinion s. 55, like s. 54(4), is consistent with the other relevant provisions of the Constitution and the Act. A member of the scheduled tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. Once it is realised that the election is from the constituency as a whole and not by reference to two separate and distinct seats there would be no difficulty in accepting the view taken by the returning officer when he declared respondent 1 to have been duly elected for the general seat.

It is true that some articles of the Constitution and some sections of the Act refer to seats in connection with election to the House of the People. For instance, when Art. 81 (2) (b) provides for the same ratio throughout the State between the population of each constituency and the number of seats allotted to it, it does refer to seats, but in the context the use of the word "seats" was inevitable. Similarly Art. 84 which lays down the qualification for the members of Parliament begins by saying that a person shall not be qualified to be chosen "to fill a seat" in Parliament unless he satisfies the tests prescribed by its cls. (a), (b) and (c). Here again the expression "to fill a seat" had to be used in the context. The same comment can be made about the use of the word "seat" in Arts. 101 (2) and in 330. There is no doubt that when a candidate is duly elected from any constituency to the House of the People he fills a seat in the House as an elected representative of the said constituency;

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and so the expression "filling the seat" is naturally used whenever the context so requires.

The position in regard to the sections of the Act which use the word "seat" or the expression "fill the seat" is exactly similar. Section 32 of the Act says that any person may be nominated as a candidate for election to "fill a seat" if he is qualified in that behalf. This section does not mean that the nomination of a person as a candidate for election is for a seat; such nomination is for the constituency. After the election is over the elected candidate is qualified to fill a seat in the House of the People to which he is elected. It is in that sense that the expression "a candidate for election to fill a seat" is used in this section. The use of the same expression in ss. 33(2), 53(2), 54 and 55 bears the same interpretation. The use of the said expression or the reference to "seat" in some of the articles of the Constitution or the sections of the Act does not, therefore, mean that election to the House of the People from a double-member constituency is held not for the constituency as a whole but by reference to the two seats.

There is no doubt that in the case of double-member constituencies recognised political parties usually adopt two candidates, one for the general seat and the other for the reserved seat; and it does appear that under the relevant statutory order issued by the Election Commission the symbol reserved for the party is allotted to both such candidates with the only difference that the symbol allotted to the scheduled caste or the scheduled tribe candidate of the party is the particular symbol enclosed within a thick black circle. This order has been issued for convenience in order to enable the very large number of illiterate and uneducated voters to identify the political affiliations of the candidates for election; and to show which of the candidates are eligible for the reserved seat; but the said order cannot affect the nature of the election nor does it purport to do so. Similarly a candidate who has made the prescribed declaration under s. 33 may withdraw his candidature under s. 37 which would mean that he is no longer contesting any seat in the

constituency; but that again cannot justify the inference that his candidature was in regard to a reserved seat for which election was seperately intended to be held. In fact, in regard to a double-member constituency election recognises no compartments at all; it is one general election with reservation of seats; that is all.

It was then contended by the appellant that even if it may be open to a member of the scheduled tribe to seek election either for the reserved seat or failing that for the general seat he ought to file two nomination papers in that behalf. In our opinion this contention is not wellfounded. It is conceded that there is no provision for the presentation of two nomination papers for two different seats in the same constituency. Indeed such an assumption would be inconsistent with the basic character of the election from a double-member constituency. In our opinion, the true position is that a member of a scheduled caste or tribe does not forego his right to seek election to the general seat merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim; and both the claims have to be decided on the basis that there is one election from the double-member constituency.

In this connection we may refer by way of analogy to the provisions made in some educational institutions and universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the rest of the candidates. We are, therefore, satisfied that the High Court was right in rejecting the appellant's contention that respondent 1 could not have been validly elected

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for the general seat from the constituency of Parvatipuram.

That takes us to the alternative contention raised by the appellant against the validity of respondent 1's election. That contention is that respondent 1 had ceased to be a member of the scheduled tribe at the material time because he had become a kshatriya. In dealing with this contention it would be essential to bear in mind the broad and recognised features of the hierarchical social structure prevailing amongst the Hindus. It is not necessary for our present purpose to trace the origin and growth of the caste system amongst the Hindus. It would be enough to state that whatever may have been the origin of Hindu castes and tribes in ancient times, gradually castes came to be based on birth alone. It is wellknown that a person who belongs by birth to a depressed caste or tribe would find it very difficult, if not impossible, to attain the status of a higher caste amongst the Hindus by virtue of his volition, education, culture and status. The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists. It is in the light of this background that the alternative plea of the appellant must be considered.

The evidence adduced by respondent 1 shows that all the documents from 1885 to 1928 consistently described him as a Mukka Dora or a member of the scheduled tribe. The appellant has, however, produced documentary evidence which indicates that from 1928

onwards respondent 1 has described himself and the members of his family as belonging to the kshatriya caste. Oral evidence led by the appellant is intended to show that respondent 1 has for some years past adopted the customs and the rituals of the kshatriya caste. It shows that marriages in the family of respondent 1 are celebrated as they would be amongst the kshatriyas, and homa is performed on such occasions. It is also attempted to be shown that the family of respondent 1 is connected by marriage ties with some kshatriya families, that a Brahmin priest officiates at the religious ceremonies performed by respondent 1, and that he wears a sacred thread. The High Court has held that even if the documentary and oral evidence adduced by the appellant is accepted at its face value, it falls far short of establishing his plea that respondent 1 had become a kshatriya at the material time. The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by respondent 1 which no doubt were intended to assert a higher status; but unilateral acts of this character cannot be easily taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right. Therefore the alternative plea made by the appellant cannot succeed.

In the result the appeal fails and is dismissed with costs in favour of respondent 1.

Kapur J.

KAPUR J.—I regret I am unable to agree with the judgment prepared by my learned brother Gajendragadkar and I shall proceed to give my reasons for my dissent.

In an election for Parliament the candidate asks for the votes of the electors by offering himself for a seat in a parliamentary constituency and it is a fundamental principle of elections that the voters exercise their suffrage in favour of a candidate who is standing

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for a particular seat in a single or in a two member constituency. The language used in the Constitution as well as in the Election Laws tends to show that the election though in a constituency is for the filling of a seat and it is for the filling of that seat that the voters in a constituency exercise their right to vote. The Constitution itself shows that the election is for filling a seat in a constituency.

The scheme of the Constitution itself when it deals with Parliament and election to Parliament supports this view. Parliament, its composition and qualification for membership of Parliament are dealt with in Chapter II of Part V of the Constitution. Article 81 deals with the composition of the House of the People. Sub-cl. (a) of cl. (1) of Art. 81 lays down that there shall be not more than 500 Members chosen by direct election from territorial constituencies and not more than 20 Members to represent Union territories. Clause (2) of Art. 81 provides that to each State shall be allotted a certain number of seats in the House of the People in such manner that the ratio between the number and population of the State is the same for all States and sub-cl. (b) provides that the State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the State. Article 84 provides for the qualifications of persons to be chosen to fill a seat in Parliament and in cl. (c) it is laid down that the qualifications shall be such as may be prescribed by an Act of Parliament.

Part XV deals with Elections. Under Art. 324 there is one general electoral roll for every territorial constituency and there is no exclusion from such roll on the ground only of religion, race, caste, creed, sex or any of them. Article 327 confers on Parliament the power to make provision with respect to elections to Legislatures. Part XVI of the Constitution make special provision relating to certain classes and under Art. 330 seats are reserved in the House of the People for Scheduled Castes and Scheduled Tribes and it also provides for the proportion that these seats shall bear to the

total number of seats allotted to any State and the reservation of seats and special representation are to cease after 10 years (Art. 334). These provisions show that the emphasis is on seats. The number seats is fixed so also reserved seats and election is to fill a seat and for that purpose qualifications of candidates are prescribed by Parliamentary legislation.

A perusal of those various articles mentioned above shows that there is no separate electoral roll and that the elections are on the basis of joint electorate. Although there is reservation of seats for the Scheduled castes there is no exclusion of Scheduled Castes or Scheduled Tribes from what are called general seats and every citizen without any consideration of caste, creed or sex is entitled to vote as well as stand for election provided he is otherwise qualified. The reservation of of seats was a concession given to the Scheduled Castes and Tribes because of their social and educational backwardness and it had to have only a temporary existence and it must be conceded that although there is a reservation of a certain number of seats for the Scheduled Castes and Tribes the members of these castes or tribes are not excluded from contesting general seats.

In order to carry out the intention of the Constitution in regard to elections two Acts were enacted by the Parliament. The Representation of People's Act, 1950, (43 of 1950) (hereinafter called the 1950 Act) and the Representation of People's Act 1951, (43 of 1951), (hereinafter called the 1951 Act). The object of the 1950 Act was to provide for allocation of seats and delimitation of constituencies for election and the object of the 1951 Act was to provide for the conduct of elections to the Houses of Parliament etc. and the qualifications and disqualifications for membership. In s. 2(f) of the 1950 Act a Parliamentary constituency is defined as a constituency provided for the purpose of election to the House of the People. In Part II of that Act provision is made for the allocation of seats in the House of the People and for reservation of seats in that House for Scheduled Castes and Tribes for filling up of seats in that House and all these provisions

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show that the seats in the House of the People allotted to the various States have to be filled by direct elections. It is significant that in all these provisions the word used is 'seat' and the election is to fill a seat.

Coming to the 1951 Act, election is defined in s. 2(d) to mean an election to fill a seat or seats in either House of Parliament . . . . . In s. 2(e) an elector means the person whose name is entered in the electoral roll of a constituency. Section 4 of the 1951 Act lays down the qualifications for membership of the House of the People and a person is not qualified to be chosen to fill a reserved seat in the House unless he is a member of a Scheduled Caste or Tribe and he is an elector for any Parliamentary constituency. In the case of any other seat the only qualification required is that he is an elector in a Parliamentary constituency. Part V of 1951 Act deals with nomination of candidates. Section 31 provides for public notice of elections and s. 32 for nomination of candidates for election. Under this section no person may be nominated as a candidate for election to fill a seat unless he is qualified to fill that seat. Section 33 deals with presentation of nomination papers and the requirements for a valid nomination. Under sub-s. (1) a nomination paper completed in the prescribed form and signed as required under that provision has to be presented to the Returning Officer and under sub-s. (2) where in a constituency any seat is reserved the candidate is not qualified to be chosen to fill that seat unless his nomination papers contain a declaration by him specifying the caste or tribe to which he belongs and sub-s. (6) provides that a candidate can file more than one nomination paper for election in the same constituency. Under s. 34 for a valid nomination for election a deposit has to be made which in the case of members of Scheduled Castes or Tribes is Rs. 250 and in other cases Rs. 500.

The contention raised on behalf of the appellant was that these various provisions of the 1951 Act show that the election is for filling a seat and therefore when a member of the Seheduled Caste or Tribe contests an election he has to make a choice as to which seat he is

contesting. There is no prohibition against his standing for election for the general constituency but if he wants to do so he has to indicate to the electors that he is so standing because when the electors vote they vote for the election of the candidate to that particular seat and to no other. This is made further clear by the fact that only one vote out of the two which every elector has the right to cast can be polled in favour of one candidate.

Every candidate has to have a symbol the necessity for which arises because of the illiteracy of the general electorate. Each party has allotted to it a symbol. In the present case the successful candidate Mr. Dippala Suri Dora was standing for the reserved seat on behalf of the Socialist Party and had been allotted the symbol of a tree which was his party symbol. In the case of a reserved seat the distinguishing feature is the black circle round the symbol so that the electors would know where to cast their vote in the case of a Scheduled Caste or Tribe candidate. It is true that the Form 2A is the same whether the candidate is contesting a reserved seat or a general seat but in the case of a person contesting a reserved seat there is a further declaration to be made that he belongs to Scheduled Caste or Tribe. It is also true that in Form 3A when notice of nomination is given the Form used is the same for both the seats but in column (6) of this Form the particulars of the caste or tribe are to be given presumably to show which of the candidates belongs to a Scheduled Caste or Tribe otherwise indicating the caste is meaningless. Similarly in Form 7A which is for the final list of contesting candidates after withdrawals have taken place the names of candidates are given along with their addresses and symbols allotted to them but candidates belonging to members of the Scheduled Castes or Tribes are distinguished by separate special marks against their names. All these distinguishing features have been provided so that electors when they cast votes for the various candidates know which of them is contesting the reserved seat and which is contesting the general seat. If that is not the object the giving of the caste would be meaningless, if not against the ideal of castelessness.

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It was contended that s. 32 only deals with nominations for election to fill a seat but it has nothing to do with qualifications which are laid down in s. 33 and that sub-ss. (2) and (6) of s. 33 showed that the election was for a constituency and not for a seat but this argument ignores the definition of election which means election to fill a seat and therefore where the word 'election' in a constituency is used it is to be construed as election to fill a seat in a constituency. Besides sub-s. 2 of s. 33 makes it clear that a candidate cannot be qualified to be chosen to fill a reserved seat in a constituency unless he makes a particular declaration. The emphasis is again on a seat. It is true that a candidate has to make a deposit for due nomination for election from a constituency but here again the word 'election' must be read as election to fill a seat from a constituency. These various sections indicate therefore and particularly the definition of the word election in s. 2(d) of the 1951 Act that when a candidate offers himself for election in a constituency he does so to fill a particular seat in a constituency.

At a pole every elector can cast one vote in favour of one candidate and another in favour of another. It was contended that it was open to an elector to cast both his votes in favour of the two candidates standing for a general seat or the two candidates for the reserved seat or one for the general seat and the other for reserved seat and that there was no law which enjoins an elector to cast one vote for the general seat and the other for the reserved seat. But this will lead us nowhere because if there are only four candidates as they were in the present case two belonging to Scheduled Castes or Tribes and two non-Scheduled Caste candidates then the voter who casts both his votes one for one Scheduled Caste and the other for the other or one for the non-Scheduled Caste and the other for the other non-Scheduled Caste candidate would be wasting his votes. One has to presume that the elector when he takes the trouble of going to the polling booth and to vote is not going to waste his votes.

In the present case the party which set up Mr. Dippala Suri Dora set him up as a candidate for the Scheduled Caste constituency which is clear from the application on behalf of the party setting him up. The final list of candidates for Parliament Ext.P3(c) also shows that Mr. Dippala Suri Dora was a candidate for the reserved seat in Parvatipuram double-member constituency. The nomination papers filed by him also show that he was being nominated for election from the Parvatipuram reserved parliamentary constituency. Thus as far as Mr. Dippala Suri Dora was concerned he had made it quite clear to the electorate that he was seeking their suffrage for filling a reserved seat in the constituency and in this view of the matter as far as he and the electors were concerned the contest was for the reserved seat and not the general seat and the people voted for him for filling the reserved seat and not the general seat.

Counsel for the respondent Mr. Dippala Suri Dora submitted that the mere fact that that respondent filed his nomination papers in a particular manner does not give a different interpretation to the various provisions of the law and if under the law a nomination like that of the respondent Mr. Dippala Suri Dora was a nomination for both the seats the mere fact that he had filled his form differently would make no difference. This contention is correct but as I have indicated above the election is to fill a seat in the constituency and the nomination must be taken to fill that seat and no other.

Reliance was next placed on ss. 53, 54 and 55 of the 1951 Act to support the case put forward on behalf of the respondent Mr. Dippala Suri Dora. No doubt in sub-s.(4) of s. 54 it is laid down that in a case where the number of contesting candidates qualified to be chosen to fill the reserved seat exceeds the number of such seats and the total also exceeds the total number of seats to be filled, then after the poll has been taken the qualified candidate receiving the largest number of votes for the reserved seat has to be declared elected and then such of the remaining candidates as have secured the largest number of votes have to be declared

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elected to fill the remaining seats and there is an illustration added to the section which supports the case of the respondent. But in view of s. 8 of the Delimitation Commission Act, 1952, which makes provisions for readjustments and delimitations it is doubtful if the provisions of s. 54(4) retain their efficacy. Under s. 8 cl.(2) of Delimitation Act it is provided that all constituencies have to be single member constituencies or two member constituencies and wherever practicable seats may be reserved for Scheduled Caste or Tribe in a single member constituency but in every two member constituency one seat has to be reserved for Scheduled Caste or Tribe. This provision destroys the effect of s. 54. If in a single member constituency a seat can be reserved which means that only a Scheduled Caste candidate can be elected to that seat the effect of reservation of seat in the double member constituency will also be that when a member of the Scheduled Caste offers himself for election to a reserved seat he can be elected only to that seat and to no other. This is also supported by the definition of electoral rights in s. 79 of the 1951 Act which is defined as a right of a person to stand or not to stand as a candidate at an election, i.e., an election to fill a seat in either House of Parliament. The electoral right which a citizen has is to stand for election to fill a seat and a successful candidate is one who is elected by securing the largest number of votes cast for that seat. This necessarily leads to the conclusion that the respondent Mr. Dippala Suri Dora who offered himself for election to fill a reserved seat could only be elected to that seat and not to the general seat.

The next contention raised on behalf of the appellant was that if a member of the Scheduled Caste or Tribe wants to contest both the seats, i.e., general and reserved he would have to file two nomination papers and pay two deposits. In view of what has been said above and in view of ss. 32 and 33 and the definition of the word 'election' such candidate has to file two nomination papers one for the general seat and the other for the reserved seat setting out the necessary qualifications which are required under the law

Similarly he will have to make two deposits under s. 34 for the same reason.

A question of some importance has been raised as to whether a member of Scheduled Caste or Scheduled Tribe can by his own act transform himself into a different and higher caste. That depends upon the view one takes of the caste system and whether caste is dependent upon birth or it varies as a consequence of *Guna, Karma* and *Subhavana* that is merit or qualities, actions and character. In Hinduism caste had its origin in vocation and was not dependent upon birth. Birth as the sole criterion of caste is a much later development and caste became rigid and hereditary when vocations became hereditary. Caste was nothing but division of labour. There is a high authority to support the view that in Hinduism caste was dependent upon actions and not on birth. In Bhagwat Gita in the fourth Discourse it is stated:

> "The four castes were created by me in accordance with their aptitude and actions; know me the author of these castes, though I am actionless and inexhaustible."

There are Verses in the Mahabharta also which go to support this. One such Verse is given as follows:—

> "Truth, Charity, fortitude, good conduct, gentleness, austerity and compassion—he in whom these are observed is a Brahmana. If these marks exist in a Sudra and are not found in a twice-born, the Sudra is not a Sudra nor the Brahmana a Brahmana" (Teaching given by Yudhisthira)

Even in Bhagwata Purana it is stated:—

> "One becomes a Brahmana by his deeds and not by his family or birth; even a Chandala is a Brahmana, if he is of pure character".

In the Chandogya Upanisad there is the interesting incident of Satyakama who was raised to the position of a Brahmana because he had spoken the truth. Thus it was his character and not his birth which determined his caste. Amongst the Hindus many have raised themselves to the position of Brahmana by their good qualities and one such instance is of Sage

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Matanga who was a *Chandala*. Vishva Mitra was a Kshtriya and became a Brahman. Hinduism might have become static at one stage but its modern history shows that this is not so now and it would not be wrong to say that caste in Hinduism is not dependent upon birth but on actions. The whole theory of *karma* is destructive of the claim of caste being dependent upon birth.

In my opinion Mr. Dippala Suri Dora had by his actions raised himself to the position of Kshtriya and he was no longer a member of the Scheduled Caste or Tribe and on that ground also his election cannot be supported.

I would therefore allow this appeal, set aside the order of the High Court and restore that of the Tribunal. The appellant will be entitled to costs of this Court as well as of the Courts below.

ORDER.

In view of the majority judgment of the Court the appeal is dismissed with costs in favour of Respondent No. 1.

Appeal dismissed.

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May 21.

KRISHAN KUMAR

v.

THE UNION OF INDIA

(JAFER IMAM and J. L. KAPUR, JJ.)

Criminal Trial—Misappropriation—Servant receiving goods but failing to account to master—Proof of conversion, if necessary—False explanation by servant, whether can be taken into consideration—Prevention of Corruption, 1947 (II of 1947), s. 5(1)(c).

The appellant was employed as an Assistant Store Keeper in the Central Tractor Organisation, Delhi. He took delivery of a consignment of iron and steel received by rail for the Organisation and removed them from the railway siding. The goods did not reach the Organisation. The appellant absented himself from duty on the following days and when he was called he gave a false explanation that he had not taken delivery of the goods. The appellant was tried for misappropriation of the goods, under s. 5(1)(c) of the Prevention of Corruption Act, 1947. At the