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(2018) 7 Supreme Court Cases 550 : 2018 SCC OnLine SC 509

In the Supreme Court of India

(BEFORE DIPAK MISRA, C.J. AND A.M. KHANWILKAR AND DR D.Y. CHANDRACHUD, JJ.)

PRAMOD LAXMAN GUDADHE . . Petitioner;

Versus

ELECTION COMMISSION OF INDIA AND OTHERS . . Respondents.

SLP (C) No. 9968 of 2018[†], decided on May 9, 2018

Election — Representation of the People Act, 1951 — S. 151-A proviso (a) — Holding of bye-election within six months from date of occurrence of vacancy — Conditions for — When election petition is pending against election of Member then even if he/she tenders resignation and same accepted by Speaker, bye-election cannot be held

— However, in instant case, no election petition was pending against election of an MP and vacancy occurred w.e.f. date of acceptance of his resignation by Speaker — Remainder of the term from date of acceptance of resignation till next General Election being not less than one year, proviso (a) not attracted — Held in such circumstances, bye-election must be held — Constitution of India — Art. 101(3) — Parliament and State Legislatures — Lok Sabha Rules of Procedure and Conduct of Business, R. 240(1-A)

A candidate, who was elected to a particular constituency in the General Election to the Lok Sabha conducted on 4-6-2014, tendered his resignation as the Member of Parliament under Article 101(3) of the Constitution read with Rule 240(1-A) of the Rules of Procedure and Conduct of Business in Lok Sabha on 8-12-2017 and the same was accepted on 14-12-2017 by the Speaker of Lok Sabha. No election petition was pending against the elected candidate in the High Court. As the seat fell vacant a PIL was filed by a public-spirited person before the High Court under Article 226 of the Constitution contending, inter alia, that if the election commenced in the month of May 2018, the effective period which the new incumbent would get is only up to March 2019, that is, less than one year and, therefore, he would not be in a position to function with all vigour and render service to the public. Support was drawn from Report No. 255 of the Law Commission of India on Electoral Reforms. Reliance was placed on Section 151-A of the Act to substantiate the stand that holding of election was not permissible thereunder. It was submitted that the prohibition contained in Section 151-A directly comes into play and, therefore, the High Court would have been well advised to restrain the Election Commission not to hold the election. It was further propounded that the amount to be spent from the exchequer on holding of an election ultimately casts a burden on the taxpayers and

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additionally, the elected candidate will only have some ceremonial role since he would not be in a position to do anything for the members of the electoral college and, therefore, the election should not be allowed to be conducted. The High Court dismissed the petition.

Dismissing the present SLP, the Supreme Court

Held :

In *Election Commission of India*, (2011) 1 SCC 370, the Supreme Court made a distinction between the two categories of vacancies, namely, vacancies in which election petitions had been filed and are pending and other vacancies where no such cases were filed and pending. The Court opined that in the first category of cases, the vacancies could not have been treated to be available for the purposes of filling up within the time prescribed under Section 151-A of the Act merely because a member of the House of a Legislature of a State had resigned and the same had been accepted by the Speaker. To arrive at the said conclusion, emphasis was laid on Section 84 of the Act. In the second category of cases, the Court pronounced that the vacancies would have to be construed as clear vacancies warranting action under Section 151-A. Similar view was expressed in other decisions.

(Paras 14, 16 and 17)

D. Sanjeevayya v. *Election Tribunal*, AIR 1967 SC 1211; *Election Commission of India* v. *Telangana Rastra Samithi*, (2011) 1 SCC 370, *relied on*

Thomasmates Gudinho v. *Election Commission of India*, 2002 SCC OnLine Kar 114 : AIR 2002 Kar 232, *approved*

Telangana Rastra Samithi v. *Union of India*, 2010 SCC OnLine AP 481 : (2010) 4 ALD 787, *cited*

In the case at hand, no election petition was pending. The elected candidate tendered his resignation on 8-12-2017 and the same was accepted by the Speaker of Lok Sabha on 14-12-2017. The command of Section 151-A is to hold the election within a period of six months from the date of occurrence of the vacancy. As the factual score depicts, the vacancy occurred when the resignation was accepted by the Speaker of Lok Sabha on 14-12-2017. It is beyond any dispute that the next General Election to Lok Sabha is in June 2019. Therefore, the remainder of the term is not less than one year. Whether the election is to be held or not would be governed by clause (*b*) to the proviso to Section 151-A and the present case is not concerned with the same. The ground raised that the code of conduct would come into play before the elections are held in June 2019 is absolutely sans substance as the Act does not contemplate so. It is the period alone that should be the governing factor subject to the pendency of election

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petition because that is not controlled by the non obstante clause. Such an interpretation is in accord with the sanctified principle of democracy and the intention of Parliament is not to keep a constituency remaining unrepresented. The concern expressed with regard to load on the exchequer cannot be treated as a ground. It is so because the representative democracy has to sustain itself by the elected representatives. The matter would be different when an election dispute is pending against the candidate that comes within the ambit and sweep of Section 84 or Section 98(c) or Section 101(b) of the Act. That not being the case, the view expressed by the High Court is absolutely impregnable.

(Para 18)

Pramod Laxman Gudadhe v. *Election Commission of India*, 2018 SCC OnLine Bom 1111, *affirmed*

R-D/60546/C

Advocates who appeared in this case:

Vikas Singh, Senior Advocate (Anagha S. Desai, Advocate) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine Bom 1111, *Pramod Laxman Gudadhe* v. *Election Commission of India* 553*a*

2. (2011) 1 SCC 370, *Election Commission of India* v. *Telangana Rastra Samithi* 555*e-f*, 556*c-d*, 557*b*

3. 2010 SCC OnLine AP 481 : (2010) 4 ALD 787, *Telangana Rastra Samithi* v. *Union of India* 555*f-g*

4. 2002 SCC OnLine Kar 114 : AIR 2002 Kar 232, *Thomasmates Gudinho* v. *Election Commission of India* 556*f-g*

5. AIR 1967 SC 1211, *D. Sanjeevayya* v. *Election Tribunal* 554*f-g*, 555*d*

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The Judgment of the Court was delivered by

DIPAK MISRA, C.J.— In a hallowed democratic body polity, the seminal requirement is fair and timely election. Purity of election abandoning any kind of dogmatic idea is consubstantial to sustain the fundamental concept of democracy which is a basic feature of our Constitution. If the "thought of democracy" is sullied, the cornerstone of the rule of law is corroded. When an individual, bereft of his status, goes to an election booth to cast his vote, he feels empowered and dignified and his self-esteem is accentuated as his inner conscience tells him that in his exercise of franchise, he is choosing a representative who shall represent the constituency. This is the very sense of feeling empowered. The participation makes him realise his political right and the collective feels that there shall be governance in accord with the Constitution so that the individual rights are protected and the collective aspirations are taken care of. It has been said by many protagonists of democracy that an atmosphere should always exist when precepts of democracy remain safe.

2. The Constitution of India gives emphasis on many aspects of political rights having regard to the rights of an individual. Thus, in a democracy, holding of elections becomes significant and the constitutional and statutory provisions take care of it. Eligibility criteria has been provided for to contest an election and sometimes more restrictions are added in respect of elections to the local self-governments. Delimitation and reservation of constituencies are conceived of and fructified so that the inclusive character of the Constitution is strengthened. The provisions in the Representation of the People Act, 1951 (for brevity "the Act") are engrafted to cover many aspects of election including the manner, method of holding elections and the grounds for setting aside the election. The Act also obliges the competent authority to see to it that no constituency remains unrepresented beyond a definite period. It is because the elected representative is expected to echo the concerns of the electoral college in entirety. The voters cannot be deprived of the said right if the statute confers such a protection. Though the right to contest an election is not a fundamental right, yet no interpretation should be placed on a statutory provision that will defeat the essential purpose of representation.

3. The prefatory note has become a warrant as the petitioner, a voter of Bhandara-Gondiya parliamentary constituency, in this special leave petition,

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has, in an astute manner, conceived a challenge by propounding that the High Court[1] has erroneously interpreted Section 151-A of the Act.

4. The elected representative, who was elected to the aforementioned constituency in the General Election to the Lok Sabha conducted on 4-6-2014, tendered his resignation as the Member of Parliament under Article 101(3) of the Constitution read with Rule 240 (1-A) of the Rules of Procedure and Conduct of Business in Lok Sabha on 8-12-2017 and the same was accepted on 14-12-2017.

5. As the seat fell vacant, the petitioner, a public-spirited person, approached the High Court of Judicature at Bombay, Nagpur Bench at Nagpur under Article 226 of the Constitution in Public Interest Litigation No. 31 of 2018 contending, inter alia, that if the election commenced in the month of May 2018, the effective period which the new incumbent would get is only up to March 2019, that is, less than one year and, therefore, he would not be in a position to function with all vigour and render service to the public and further, there shall be huge expenditure in conducting the election. He had drawn support from Report No. 255 of the Law Commission of India on Electoral Reforms. Reliance was placed on Section 151-A of the Act to substantiate the stand that holding of election was not permissible under the said provision.

6. The High Court, scrutinising the language employed in Section 151-A, opined that the argument advanced by the petitioner was sans substance and resultantly dismissed the writ petition.

7. We have heard Mr Vikas Singh, learned Senior Counsel along with Ms Anagha S. Desai, learned counsel for the petitioner.

8. The dates pertaining to the holding of election and the resignation are not controverted. Further, it is not a case where an election petition was pending against the elected candidate before the High Court. It is also not in dispute that the General Election to the Lok Sabha is to be held in June 2019.

9. The said being the undisputed factual position, we are only required to analyse the statutory provisions and justifiability of the holding of bye-election. Part IX of the Act deals with Bye-Elections. Section 147 deals with casual vacancies in the Council of States. Section 149 adverts to casual vacancies in the House of the People. Section 150 states about casual vacancies in the State Legislative Assemblies and Section 151 deals with casual vacancies in the State Legislative Councils. Section 151-A, which was inserted by the Representation of the People (Amendment) Act (21 of 1996) with effect from 1-8-1996, being relevant for the present purpose, is extracted below:

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"**151-A.** ***Time-limit for filling vacancies referred to in Sections 147, 149, 150 and 151***.—Notwithstanding anything contained in Section 147, Section 149, Section 150 and Section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

(*a*) the remainder of the term of a member in relation to a vacancy is less than one year; or

(*b*) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period."

10. The aforesaid provision commences with a non obstante clause and clearly states that notwithstanding anything contained in Section 147, Section 149, Section 150 and Section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy. The holding of election is controlled by a rider, namely, that the remainder of the term of a member in relation to a vacancy is less than one year. It is further postulated therein that if the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period, the principal part of the provision contained in Section 151-A would not apply. In the present case, we are not concerned with the second postulate, for what has emerged for consideration singularly pertains to the concept of period.

11. It is submitted by Mr Vikas Singh, learned Senior Counsel for the petitioner that the prohibition contained in Section 151-A directly comes into play and, therefore, the High Court would have been well advised to restrain the Election Commission not to hold the election. It is further propounded by him that the amount to be spent from the exchequer on holding of an election ultimately casts a burden on the taxpayers and additionally, the elected candidate will only have some ceremonial role since he would not be in a position to do anything for the members of the electoral college and, therefore, the election should not be allowed to be conducted.

12. At the very outset, we must make a distinction between Sections 147, 149, 150 and 151 on the one hand and Section 151-A of the Act

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on the other. While interpreting these provisions, it has to be kept in mind that though the right to elect a person is fundamental to democracy, yet it is only a statutory right. It is also well settled in law that the legislations governing the said right have to be strictly construed.

13. A two-Judge Bench in *D. Sanjeevayya* v. *Election Tribunal*[2], prior to the insertion of Section 151-A of the Act, was dealing with the controversy that pertained to occurring of a casual vacancy and, in that context, referred to the scheme of the Chapter pertaining to bye-elections and analysed Article 190(3) of the Constitution. The Court, referring to the said Article and the various provisions of the statute and after adverting to the fact situation where an election petition was pending challenging the election, held : (AIR p. 1213, para 4)

> "*4.* We are unable to accept the argument of the appellant as correct. In our opinion, the provisions of Section 150 of the Act must be interpreted in

the context of Sections 84 and 98(*c*) and other relevant provisions of Part III of the same Act. If the interpretation contended for by the appellant is accepted as correct the vacancy must be filled by a bye-election as soon as a member resigns his seat notwithstanding the pendency of an election petition challenging his election. If the candidate who filed the election petition eventually gets a declaration that the election of the member is void and that he himself had been duly elected there will be two candidates representing the same constituency at the same time, one of them declared to be duly elected at the General Election and the other declared to have been elected at the bye-election and an impossible situation would arise. It cannot be supposed that Parliament contemplated such a situation while enacting Section 150 of the Act. Parliament could not have intended that the provisions of Part VI of the Act pertaining to election petitions, should stand abrogated as soon as a member resigns his seat in the legislature. It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. …"

14. Proceeding further, the Court in *D. Sanjeevayya case*[2] ruled that when an election petition has been referred to a tribunal by the Election Commission and the tribunal is seized of the matter, the petition has to

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be disposed of according to law. The tribunal has to adjudge at the conclusion of the proceeding whether the returned candidate has or has not committed any corrupt practice at the election and secondly, it has to decide whether the second respondent therein should or should not be declared to have been duly elected. A returned candidate cannot get rid of an election petition filed against him by resigning from the seat in the legislature, whatever the reason for his resignation may be.

15. In this regard, reference to the authority in *Election Commission of India* v. *Telangana Rastra Samithi*[3] is extremely useful. In the said case, the respondent had challenged the decision of the Election Commission of India not to hold the bye-elections in respect of two Assembly Constituencies in the State of Andhra Pradesh which was set aside by the High Court[4]. The High Court had quashed the action placing reliance on Section 151-A of the Act holding, inter alia, that the said provision is mandatory especially when the vacancies had already been notified by the Speaker of the Assembly as contemplated under Article 190(3)(b) of the Constitution. It is worth noting that the High Court had ignored the pendency of the election petitions against the candidates who had resigned on the foundation that uncertain consequences of the election petitions could not dilute the effect of Section 151-A of the Act. The two-Judge Bench,

scrutinising the provisions of the Act and Article 190(3)(b), stated : (SCC p. 386, para 45)

> "*45.* The Act is a complete code for the conduct of elections by the Election Commission of India appointed under Article 324 of the Constitution which provides for superintendence, direction, control and conduct of elections to Parliament and to the legislature of every State and also of elections to the offices of President and Vice-President held under the Constitution. The provisions of Article 190 (3)(b) of the Constitution have, therefore, to be read along with the provisions of the 1951 Act. Section 84 of the said Act cannot be rendered otiose by holding that all vacancies on account of the aforesaid provision of the Constitution become immediately available for being filled up by way of a bye-election. The same reasoning applies in regard to Section 151-A of the 1951 Act and its impact on the latter part of Section 84 thereof. As has been mentioned hereinbefore, a proceeding under Section 84 has to run its full course, particularly for the purposes of Section 8-A of the said Act. The views expressed by the Division Bench of the High Court on this

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point cannot, therefore, be sustained."

16. The Court in *Election Commission of India case*[3] went on to say that the introduction of Section 151-A did not alter the position as far as the provisions of Section 84 and, consequently, Sections 98(*c*) and 101(*b*) of the Act are concerned, although a casual vacancy may have occurred within the meaning of Section 150 of the Act. The Court made a distinction between the two categories of vacancies, namely, vacancies in which election petitions had been filed and are pending and other vacancies where no such cases were filed and pending. The Court opined that in the first category of cases, the vacancies could not have been treated to be available for the purposes of filling up within the time prescribed under Section 151-A of the Act merely because a member of the House of a Legislature of a State had resigned and the same had been accepted by the Speaker. To arrive at the said conclusion, emphasis was laid on Section 84 of the Act. In the second category of cases, the Court pronounced that the vacancies would have to be construed as clear vacancies warranting action under Section 151 -A of the Act.

17. A Division Bench of the High Court of Karnataka in *Thomasmates Gudinho* v. *Election Commission of India*[5], while interpreting Section 151-A of the Act, has opined : (SCC OnLine Kar para 13)

> "*13.* … Section 151-A no doubt seeks to ensure that no Constituency remains unrepresented for more than six months. But it is not unconditional. It is subject to two exceptions i.e. where the remainder of the term of a member in relation to a vacancy is less than one year or where the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period. Further

the non obstante clause is limited in its application to Sections 147, 149, 150 and 151. The non obstante clause does not refer to Section 84 or 98(*c*) or 101. It therefore follows that Section 151-A will have no application if an election petition is pending where the prayer is not merely a challenge to the election of the elected candidate, but also seeks a declaration that the petitioner or someone else should be declared as having been elected under Section 84 read with Section 101 of the Act."

Be it noted, the said view has been approved in *Telangana Rastra Samithi*[3].

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18. In the case at hand, no election petition was pending. The elected candidate tendered his resignation on 8-12-2017 and the same was accepted by the Speaker of Lok Sabha on 14-12-2017. The command of Section 151-A is to hold the election within a period of six months from the date of occurrence of the vacancy. As the factual score depicts, the vacancy occurred when the resignation was accepted by the Speaker of Lok Sabha on 14-12-2017. It is beyond any dispute that the next General Election to Lok Sabha is in June 2019. Therefore, the remainder of the term is not less than one year. Whether the election is to be held or not would be governed by clause (*b*) to the proviso to Section 151-A and we are not concerned with the same. The ground raised that the code of conduct would come into play before the elections are held in June 2019 is absolutely sans substance as the Act does not contemplate so. It is the period alone that should be the governing factor subject to the pendency of election petition because that is not controlled by the non obstante clause. Such an interpretation is in accord with the sanctified principle of democracy and the intention of Parliament is not to keep a constituency remaining unrepresented. The concern expressed with regard to load on the exchequer cannot be treated as a ground. It is so because the representative democracy has to sustain itself by the elected representatives. We may hasten to add that the matter would be different when an election dispute is pending against the candidate that comes within the ambit and sweep of Section 84 or Section 98(*c*) or Section 101(*b*) of the Act. That not being the case, the view expressed by the High Court is absolutely impregnable.

19. Consequently, special leave petition, being devoid of merit, stands dismissed. There shall be no order as to costs.

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† Arising from the Judgment and Order in *Pramod Laxman Gudadhe* v. *Election Commission of India*, 2018 SCC OnLine Bom 1111 (Bombay High Court, PIL No. 31 of 2018, dt. 11-4-2018)

[1] *Pramod Laxman Gudadhe* v. *Election Commission of India*, 2018 SCC OnLine Bom 1111

[2] *D. Sanjeevayya* v. *Election Tribunal*, AIR 1967 SC 1211

[3] *Election Commission of India* v. *Telangana Rastra Samithi*, (2011) 1 SCC 370

[4] *Telangana Rastra Samithi* v. *Union of India*, 2010 SCC OnLine AP 481 : (2010) 4 ALD 787

[5] *Thomasmates Gudinho* v. *Election Commission of India*, 2002 SCC OnLine Kar 114 : AIR 2002 Kar 232

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