

**THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE  
AND  
THE HON'BLE SRI JUSTICE S.V.BHATT**

**W.P.Nos.15921,16147 and 15928 of 2015**

-

-  
**ORAL JUDGMENT:** (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

The petitioners, in these writ petitions under Article 226 of the Constitution of India, seek similar reliefs, based on the press note dated 02-06-2015 issued by the Election Commission of India (for short 'the EC') proposing to hold biennial elections to the Andhra Pradesh Legislative Council from Local Authorities' Constituencies (for short 'the Election').

2) In the first petition (W.P.No.15921 of 2015), petitioner No.1 is a political party registered under Section 29-A of the Representation of The People Act, 1951 (for short 'the Act'), and the second petitioner is it's Secretary. They are challenging the action of the EC in issuing the press note dated 02-06-2015, declaring to conduct separate elections to the posts of members of the A.P. Legislative Council (for short 'the Council'), to fill up two vacancies each from Krishna and Visakhapatnam Local Authorities' Constituencies as arbitrary, illegal, unjust, discriminatory and violative of fundamental rights guaranteed under the Constitution of India. According to the petitioners, holding of an election, in the manner in which it is proposed, is contrary to Article 171 of the Constitution, Section 27 of the Act and the provisions of Delimitation of Council Constituencies (Andhra Pradesh) Order, 2006, (for short 'the delimitation order'). They are also seeking a direction to the EC to conduct single election to fill up two vacancies each from Krishna and Visakhapatnam Local Authorities' Constituencies.

3) In the second petition (W.P.No.16147 of 2015) the petitioner, who desires to contest the said elections, is an individual and former member of the Legislative Assembly. He also seeks the similar relief as prayed for in the first petition.

4) In the third petition (W.P.No.15928 of 2015) also, the petitioner is an individual who seeks to challenge the very same press note stating that the decision of the EC to hold elections for only one vacancy though there exists two vacancies in one territorial constituency of Chittoor District i.e. Local Authorities' Constituency as illegal, arbitrary, discriminatory and contrary to Article 171 (4) of The Constitution.

5) The impugned press note was issued by the EC on 02-06-2015. The writ petitions, though, it appears, were filed on 05.06.2015, were mentioned before the

Court for urgent hearing on 08-06-2015. On this date the Court directed learned counsel for the petitioners to give notice to the EC and other respondents and kept the petitions for admission on 09-06-2015. In the meanwhile, a notification was published in the Andhra Pradesh Gazette on 09-06-2015 declaring the biennial elections to the Andhra Pradesh Legislative Council from the Local Authorities' Constituencies stating that the seats of 11 members of the Legislative Council of the State of Andhra Pradesh elected by the members of the Local Authorities' have fallen vacant on the retirement of sitting members on the expiration of their term of the office. The details, as given in the notification, namely, name of the retired members, name of the Local Authorities' Constituencies, number of members to be elected and date of their retirement read thus:-

| Name of the State – Andhra Pradesh |                                                                 |                                  |                                 |                    |
|------------------------------------|-----------------------------------------------------------------|----------------------------------|---------------------------------|--------------------|
| Sl. No.                            | Name of members                                                 | Name of LAC                      | Number of Members to be elected | Date of Retirement |
| (1)                                | (2)                                                             | (3)                              | (4)                             | (5)                |
| 1.                                 | Yellareddigari Sivarami Reddy                                   | Anantapur Local Authorities      | 1                               | 29.03.2013         |
| 2.                                 | Yallamanchili Venkata Babu Rejendra Prasad                      | Krishna Local Authorities        | 1                               | 29.03.2013         |
| 3.                                 | China Rajappa Nimmakayala                                       | East Godavari Local Authorities  | 1                               | 01.05.2013         |
| 4.<br>5.                           | Dr.Rayapati Srinivas<br>Thelukutla Gopala Venkata Krishna Reddy | Guntur Local Authorities         | 2                               | 01.05.2013         |
| 6.                                 | Vasireddy Varada Rama Rao                                       | Vizianagaram Local Authorities   | 1                               | 01.05.2013         |
| 7.                                 | Dadi Veerabhadra Rao                                            | Vishakhapatnam Local Authorities | 1                               | 01.05.2013         |
| 8.                                 | K.Jayachandra Naidu                                             | Chittoor Local Authorities       | 1                               | 01.05.2013         |
| 9.                                 | Ilapuram Venkaiah                                               | Krishna Local Authorities        | 1                               | 29.03.2015         |
| 10.                                | D.V.Suryanarayana Raju                                          | Visakhaparnam Local Authorities  | 1                               | 01.05.2015         |
| 11.                                | Pothula Rama Rao                                                | Prakasam Local Authorities       | 1                               | 01.05.2015         |

5.1) The following portion of the notification issued by the Governor of Andhra Pradesh is also relevant:-

“AND WHEREAS, **Biennial election to fill up 8 seats in the year 2013 could not be then conducted as the Constituent Local Bodies/Electors were not in existence at that time and while in the year 2014, the Constituent Local Bodies/Electors with their members came into existence but the State of Andhra Pradesh was bifurcated into two States**, namely, Andhra Pradesh and Telangana by the Andhra Pradesh Reorganization Act, 2014 and there was inconsistency in the Act, regarding the number of seats in respect of Local Authorities Constituencies allocated to Andhra Pradesh, viz., as per Section 23 of the Andhra Pradesh Reorganization Act, 2014, 17 seats were allocated to the Andhra Pradesh Legislative Council in respect of Local Authorities' Constituencies but under the Third Schedule to the said Act, 20 members were allocated to these Constituencies;

AND WHEREAS, it was decided by the Commission that before conducting the elections for filling the above mentioned **vacancies occurred in 2013 as well as in 2015**, it was necessary to remove the above said inconsistency;

AND WHEREAS, in terms of Section 108 of the said Act, this inconsistency was referred to the Central Government (Ministry of Home Affairs) for removing the said inconsistency;

AND WHEREAS, the said inconsistency has now been removed by order of Ministry of Home Affairs, dated 29.04.2015, read with Andhra Pradesh Reorganization (Amendment) Act, 2015, dated 30.03.2015, whereby the total number of seats to the Andhra Pradesh Legislative Council has been increased to 58 from 50 and the seats in respect of Local Authorities Constituencies has been kept as 20;

AND WHEREAS, a biennial election has thus, to be held for the purpose of filling all the above mentioned eleven vacancies so arisen;

AND WHEREAS, **It is clarified that the election to fill the two vacancies from Guntur Local Authorities' Constituency which arose on 1.5.2013 will be held as single election, whereas elections to fill the remaining 9 vacancies will be held as separate elections to fill one vacancy each;**

NOW, THEREFORE, as recommended by the Election Commission of India in pursuance of section 16 read with Section 15A of the Representation of the People Act, 1951 (43 of 1951), the Governor of the State of Andhra Pradesh is hereby pleased to call upon each of the Local Authorities' Constituencies of the State mentioned in column (2) of the table given in the Annexure to elect the number of Members as indicated in column (4) of the table against each of the corresponding Constituencies, for the purpose of filling the above vacancies, in accordance with the provisions of the said Act and of the rules and orders made thereunder.

E.S.L.NARASIMHAN,  
Governor of Andhra Pradesh"

(emphasis supplied)

5.2) The election programme was also declared along with the notification dated 09-06-2015, which reads as follows:-

"(A) appoints, with respect to the said election in each of the constituencies,-

- (a) the 16<sup>th</sup> June, 2015 (Tuesday), as the last date for making nominations;
- (b) the 17<sup>th</sup> June, 2015 (Wednesday), as the date for the scrutiny of nominations;
- (c) the 19<sup>th</sup> June, 2015 (Friday), as the last date for the withdrawal of candidatures;
- (c) the 3<sup>rd</sup> July, 2015 (Friday), as the date on which a poll shall, if necessary, be taken; and
- (e) the 10<sup>th</sup> July, 2015 (Friday), as the date before which the election shall be completed; and

(B) fixes the hours from 8.00 A.M. to 4.00 P.M., as the hours during which the poll shall, if necessary, be taken on the date specified above for the election."

6) The election programme was declared by the EC vide Notification dated 09.06.2015 under the orders of the Principal Secretary to the Election Commission of India and by the Chief Electoral Officer, Andhra Pradesh, in pursuance of Sections 30 and 56 of the Act. The notifications dated 09.06.2015, declaring the election, could not have been challenged in these petitions, which were filed before the date of notification, nor the learned counsel for the parties subsequently sought leave of this Court to challenge the said notification.

7) Mr.C.V.Mohan Reddy, the learned Senior Counsel appearing for the petitioners in the first writ petition, at the outset, submitted that the EC ought to have declared to conduct single election to fill up two vacancies each from Krishna and Visakhapatnam Local Authorities' Constituencies as they proposed to hold single election for two vacancies in Guntur Local Authorities' Constituency. In other words, he submitted that it is not only improper and discriminatory but also illegal to hold separate elections for filling up two vacancies from same territorial Constituency contrary to the mandate contemplated by Article 171 of the Constitution. This Article, he submitted, contemplates single election in a single territorial constituency in accordance with the system of proportional representation by means of the single transferable vote. He further submitted that in any case it was wrong on the part of the EC to discriminate between the election to fill up two vacancies from one territorial constituency i.e. Guntur Local Authorities' Constituency and for two

vacancies each from two territorial constituencies, namely, Krishna and Visakhapatnam Local Authorities' Constituencies. He submitted that merely because the term of the seats for which the elections are being held expired in the year 2013 and 2015 in Krishna and Visakhapatnam Local Authorities' Constituencies that cannot be the ground for holding separate elections. He submitted that there is absolutely no rational in holding separate elections for two vacancies from one territorial constituency when the relevant provisions of the Act and Article 171 clearly mandates single election in accordance with the system of proportional representation by means of the single transferable vote. In support of his contention he placed reliance on the judgment of the Supreme Court in ***Election Commission of India v. Ashok Kumar and others***<sup>[1]</sup>.

8) Mr.Ch.Siva Reddy, the learned counsel appearing for the petitioner in the second petition (W.P.No.16147 of 2015), repeated the submissions advanced by Mr.C.V.Mohan Reddy, learned Senior Counsel. We are, therefore, not making specific reference to his submissions since the challenge in both the petitions is identical. Mr.Ch.Siva Reddy, in support of his submissions, placed reliance on the judgment of this Court in ***Kayathi Jayapal Reddy v. State Election Commission and another***<sup>[2]</sup>.

9) Mr.Ponnaolu Sudhakar Reddy, learned counsel appearing for the petitioner in the third petition (W.P.No.15928 of 2015), submitted that it was wrong, illegal, discriminatory and contrary to Article 171 of the Constitution, apart from it being violative of Article 14 of the Constitution and the Election Rules of 1961, to hold election for only one vacancy when admittedly there exists two vacancies in the territorial constituency of Chittoor District. In short, he submitted that the EC has committed grave error of law in holding election from Local Authorities' Constituencies for only one vacancy out of two vacancies in Chittoor District.

10) On the other hand, Mr.Avinash Desai, learned counsel appearing for the EC, at the outset, invited our attention to Article 329 of the Constitution of India and Section 100 of the Act and submitted that these writ petitions cannot be entertained since the notification declaring the election has already been issued. He submitted that it is not open to the petitioners to call in question the election except by an election petition. He submitted that grounds, on which the petitioners have challenged the press note declaring the instant election, are available under Section 100 of the Act, to challenge the election after the process is complete. On merits, he submitted that in case of Krishna and Visakhapatnam Local Authorities'

Constituencies, the EC has decided to hold separate elections since the election is for two vacancies which occurred at two different points of time, i.e. in 2013 and 2015, while in Guntur Local Authorities' Constituency both the vacancies arose in 2013 i.e., on 01-05-2013. He submitted that the notification is issued to fill up eight(8) seats since in the year 2013 biennial election could not be then conducted as the Constituent Local Bodies/Electors were not in existence at that time and while in the year 2014, the Constituent Local Bodies/Electors with their members came into existence but the State of Andhra Pradesh was bifurcated into two States and since there was inconsistency in the A.P. Reorganization Act, 2014, regarding the number of seats in respect of Local Authorities Constituencies. He submitted that the vacancies occurred in 2013 as well as in 2015, are though proposed to be filled by holding election on the same day, those vacancies cannot be conducted by single election. In the case of Guntur Local Authorities' Constituency, he submitted, the EC is holding single election since both the vacancies occurred on the same day in 2013. He submitted that in ***A.K.Walia v. Union of India and others*** [C.W.132/94 decided by a Division Bench presided over by Justice P.K.Bahri and Justice Vijender Jain on 14.01.1994] identical challenge was raised before the Delhi High Court. It was in respect of three (3) seats of Rajya Sabha from the Electoral College comprising of members of the Legislative Assembly of Delhi wherein the Delhi High Court dismissed the petition. He also placed notification, published in The Andhra Pradesh Gazette, Part-V, on record for our perusal. In support of his submissions, he placed reliance upon the following Judgments: ***N.P.Ponnuswami V. The Returning Officer, Namakhal Constituency and others***(<sup>[3]</sup>); ***Mohinder Singh Gill and another V.The Chief Election Commissioner, New Delhi and others***(<sup>[4]</sup>); ***Election Commission of India V. Shivaji and others***(<sup>[5]</sup>) and ***Election Commission of India V. Telangana Rastra Samithi and Another***(<sup>[6]</sup>)

11) In this back drop, it would be advantageous to reproduce the relevant portion of Article 171 of the Constitution for better appreciation of the averments advanced by the learned counsel for the parties, which reads thus:-

**"171. Composition of the Legislative Councils.-** (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed [one-third] of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) ....

(3) Of the total number of members of the Legislative Council of a State-

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

- (b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
  - (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
  - (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
  - (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).
- (4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.”

11.1) Similarly, Article 329 of the Constitution of India and Section 100 of the Act are also relevant. Article 329 of the Constitution reads thus:

“329. Bar to interference by courts in electoral matters.- [Notwithstanding anything in this Constitution]

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or 328, shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an elected petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

11.2) Section 100 of the Act reads thus:

“100. Grounds for declaring election to be void:- (1) Subject to the provisions of sub-section (2), if [the High Court] is of opinion--

- (a) ...
- (b) ...
- (c) ...
- (d) That the result of the election, in so far as it concerns a returned candidate, has been materially affected--
  - (i) .....
  - (ii) .....
  - (iii) .....
  - (iv) By any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.”

12) A glance at Article 329 of the Constitution, for our purpose, would show that no election to either House of the Legislature of a State shall be called in question except by an Election Petition. Whether a ban under this Article is a blanket ban and whether Article 226 is also covered by this embargo, and if so,

Section 100 is enough to accommodate every kind of objection, constitutional, legal or factual which may have the result of invalidation of election, were the questions considered by the Supreme Court, among many other issues/questions in ***Mohinder Singh Gill*** (supra). After having considered several judgments of the Supreme Court and some English Judgments it was held that Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its Officers for carrying forward the process of election to its culmination in the formal declaration of the result.

13) Section 100 of the Act provides grounds for declaring election to be void. It states that subject to the provisions of sub-section (2), if the High Court is of opinion that the result of election, insofar as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any Rules or Orders made under this Act, the High Court shall declare the election of the returned candidate to be void. Thus, from a bare reading of this Section, it is clear that Section 100(1)(d)(iv) of the Act takes care of the situation present in the instant writ petition. Having regard to the ground of challenge, based on Article 171, as contended by the learned counsel for the parties, in our opinion, is undoubtedly available to the petitioners after the election to call in question the election of the returned candidate on the ground of non-compliance with the said provisions of the Constitution. In other words, the sole remedy for an aggrieved party, if he wants to challenge any election, is an Election Petition, in particular when the ground of challenge can be raised in election petition under section 100 of the Act. The exclusion of all other remedies, including the constitutional remedy like a writ petition under Article 226 of the Constitution, is because of *non obstante* clause in Article 329 of the Constitution. Section 100, as we have already seen, provides for the ground on which an election may be called in question, one of which is non-compliance of the provisions of the Constitution. We are not expressing any opinion on the question whether, in the present case, the Election Commission failed to comply with the provisions of the Constitution including Article 171. Our observations are only in respect of grounds raised by the petitioners for challenging the press note, whereby the EC declared to hold biennial elections to the A.P. Legislative Council from the Local Authorities' Constituencies.

13.1) In ***N.P.Ponnuswami*** (supra) the Seven Judge Bench of the Supreme Court dealt with the appeal from an order of Madras High Court dismissing the petition of the appellant praying for a Writ of Certiorari. The challenge in the writ was to the rejection of nomination paper for the election to the Madras Legislative Assembly. While dealing with the question, as aforementioned, the observations

made by the Supreme Court in paragraph 9 of the report are relevant for our purpose, which read thus:-

9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art.226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question Article 392 (b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. **If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art.329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.**

(emphasis supplied)

14) In **Shivaji** (supra) the Supreme Court while dealing with the judgment of the Bombay High Court in appeal, wherein the High Court had interfered with the process of election twice, observed that even if there was any ground relating to the non-compliance with the provisions of the Act and the Constitution on which the validity of any election process could be questioned, the person interested in questioning the election has to wait till the election is over and institute a petition in accordance with Section 81 of the Act calling in question the election of the successful candidate within 45 days from the date of election of the returned candidate but not earlier than the date of election. [Also see **Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman (1985) 4 SCC 689** and **Inderjit Barua v. Election Commission of India (1985) 4 SCC 722**].

15) In **Ashok Kumar** (supra) an interim order passed by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, during the currency of the process of election, whereby the High Court had stayed the notification issued by the Election Commission of India, the Constitution Bench of the Supreme Court, in appeal, summed up its conclusions by partly restating what the Two Constitution Benches had already said, and then added, by clarifying what follows therefrom, in view of the analysis made by them, observed as follows:-

“32. ....

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of

election till the date of declaration of result is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) ...

(4) ...

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court’s indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

15.1) We have reproduced only relevant conclusions/observations made by the Supreme Court.

16) In the backdrop of the law laid down by the Supreme Court, we have no hesitation in holding that the challenge raised in these writ petitions must fail mainly on three grounds viz., first, the notification has already been issued and the election process is set in motion; second, Article 329 bars every challenge to any election including the election process which commences from the date of notification in the official gazette, except by way of election petition under the Act; and third, the grounds of challenge in the instant petitions, as raised by learned counsel for the parties, are available to call in question the election of the returned candidate, by way of election petition under Section 100 of the Act, once the election process is complete. The extraordinary jurisdiction of the High Court under Article 226 of the Constitution, insofar as the grounds of challenge raised in these petitions are concerned, in view of the provisions of Article 329 of the Constitution, cannot be invoked and on this ground alone the instant writ petitions must fail. The grounds, as observed earlier, on which an election can be called in question cannot be raised at an early stage and the errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal. On this ground alone, the first two writ petitions deserve to be dismissed. Order accordingly. In view thereof, we refrain from entering into merits of the case and leave it open to the petitioners, if they so desire, to challenge the election after the results are declared. We are keeping all the contentions of the petitioners on merits open to be raised and considered in the Election Petition, if instituted, as contemplated by Section 100 of the Act.

17) Insofar as the third writ petition is concerned, at the outset, we would like to refer the judgment of the Supreme Court in ***Telangana Rastra Samithi*** (supra).

In this judgment, the Supreme Court was dealing with an appeal arising from the order passed by the High Court in a writ petition involving the holding of bye-elections to casual vacancies in the State Legislative Assembly. The writ petition was allowed by the High Court by applying the literal rule of interpretation. The Supreme Court in this appeal in paragraph 46 observed thus:

“46. We are, therefore, of the firm view that the introduction of Section 151-A in the Constitution did not alter the position as far as the provisions of Section 84 and consequently Sections 98 (c) and 101 (b) of the 1951 Act are concerned, since **although a casual vacancy may have occurred within the meaning of Section 150 of the 1951 Act, those vacancies in which election petitions had been filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151-A of the 1951 Act. Article 190 (3) (b) of the Constitution merely indicates that if a Member of a House of a Legislature of a State resigns his seat by writing to the Speaker and such resignation is accepted, his seat shall become vacant. It does not introduce any element of compulsion on the Election Commission to hold a bye-election ignoring the provisions of Section 84 of the Act.** In such cases, we have little hesitation in holding that such casual vacancies are not available for being filled up and the Commission will have to wait for holding elections in such constituencies until a decision is rendered in regard to the latter part of Section 84 of the 1951 Act during the life of the House. The view expressed by the High Court that a case has to be decided in accordance with the laws as existing on the date of adjudication, while salutary in principle, are not attracted to the facts of this case in view of the provisions of Section 84 of the 1951 Act.”

(emphasis supplied)

18) From the above judgment, it is clear that although a casual vacancy may have occurred within the meaning of

Section 150 of the Act, such vacancies in which election petitions had been filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151-A of the Act.

19) In the instant case, it is not in dispute that though sitting member of the Legislative Council resigned in the year 2014, before the resignation, his election was challenged by the defeated candidate in Election Petition No.1 of 2011 in this High Court with a prayer to declare him as elected by setting aside the election of 1<sup>st</sup> respondent therein. In view of such prayer, the election petition cannot be stated to have rendered infructuous in view of the resignation of the 1<sup>st</sup> respondent in the said petition. Thus, we do not find any reason to interfere with the election process in respect of the territorial Constituency in Chittoor District, viz., Local Authorities' Constituency, whereby election for only one vacancy is declared. Thus, the third petition fails and dismissed as such also on this ground.

20) Accordingly, all the writ petitions are dismissed. No order as to costs.

21) Miscellaneous petitions pending in the writ petitions, if any, also stand disposed of.

\_\_\_\_\_  
**Dilip B.Bhosale, ACJ**

\_\_\_\_\_  
**S.V.Bhatt, J**

10<sup>th</sup> June, 2015.

Note : L.R. Copy to be marked : Yes/No

B/o.  
TSNR

\_\_\_\_\_  
[\[1\]](#) ) [ (2000) 8 SCC 216 ]  
[\[2\]](#) ) [ AIR 2002 A.P 307 ]  
[\[3\]](#) ) [ AIR 1952 SC 64 ]  
[\[4\]](#) ) [ AIR 1978 SC 851 ]  
[\[5\]](#) ) [(1988) 1 SCC 277]  
[\[6\]](#) ) [(2011) 1 SCC 370]