

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-(PIL)-136-2021 (O&M)

Date of decision:- 05.08.2021

Vinod Kumar and others ...Petitioner (s)

Versus

The State of Haryana and others ...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE**
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sandeep Goyat, Advocate, for the petitioners.
Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No. 1.
Mr. Namit Kumar, Advocate, for respondents No. 2 and 3.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court)

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RAVI SHANKER JHA, CHIEF JUSTICE (oral)

This petition has been filed by the petitioners praying for a direction to the respondents for declaring the election schedule to conduct bye-election for 46-Ellenabad Assembly Constituency in the State of Haryana.

Learned counsel for the petitioners submits that the seat in 46-Ellenabad Assembly Constituency fell vacant on 27.01.2021 and though six months have lapsed, no decision has been taken to hold the bye-election. In such circumstances, the petitioners pray for a mandamus to the respondents to hold the bye-election in 46-Ellenabd Assembly Constituency.

Learned counsel appearing for respondents No. 2 and 3 submits that the Election Commission of India sought the concurrence of the Ministry of Law and Justice and certified that due to outbreak of the second wave of COVID-19 in the country, it would not be appropriate to hold bye-elections till the pandemic situation significantly improves. The document/communication produced by the learned counsel in this regard is taken on record as Mark-X.

We have heard learned counsel for the parties and have perused the records.

Undoubtedly, in terms of Section 151-A of the Representation of the People Act, 1951 (hereinafter referred to as ‘the Act’), a bye-election to fill up a vacancy has to be held within a period of six months from the date of occurrence of the vacancy. For in the present case, a vacancy in the assembly constituency (46-Ellenabad in Haryana) had occurred on 27.01.2021, the six months period expired on 26.07.2021. However, what needs to be noticed is that in terms of proviso (b) to Section 151-A of the Act, nothing contained in the section shall apply if the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period. An analysis of the press-note dated 05.05.2021 (Annexure P-5) issued by the Election Commission of India as also its response dated 01.07.2021 to the notice issued on behalf of the petitioners reveal that the Commission had decided to defer the bye-election in various States/UTs including 46-Ellenabad constituency owing to the outbreak of second wave of Covid-19. It was clarified that the Commission would take the required decision at an appropriate time after obtaining necessary inputs from the concerned States and evaluating the severity of the prevalent pandemic in consultation with the National Disaster Management Authority/State Disaster Management Authority. Further, as indicated above, what has been submitted before us is that Commission had sought the concurrence of the Ministry of Law & Justice and certified that the election cannot be held within the period envisaged under Section 151-A (ibid) including the bye-election of 46-Ellenabad Constituency in Haryana.

In the circumstances, when the Election Commission of India is in seisin of the matter and is cognizant of its obligation, we are sanguine that as soon as the situation improves and is found to be viable/conducive, the Commission shall hold the bye-election.

Thus, in the given situation, we are dissuaded to interfere in the matter at this stage. The petition is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

05.08.2021
Amodh/ravinder

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No