

17.04.2023  
Item No.9  
gd/ssd

WPA(P)/169/2023  
SUVENDU DEY AND ORS.  
VS  
ELECTION COMMISSION OF INDIA AND ORS.

Mr. Kishore Dutta,  
Mr. Rajarshi Datta,  
Mr. Soumava Mukherjee  
... for the Petitioners.

Mr. Anuran Samanta  
... for the Respondent Nos.1 and 2.

Mr. Anirban Ray,  
Mr. Piyush Agarwal,  
Ms. Utsha Dasgupta  
... for the Respondent No.10.

1. By this public interest litigation the petitioners seek for a direction upon the official respondent, more particularly the Election Commission to declare the bye election in the Assembly Constituency 167-Manicktala and fill up the casual vacancy in the Legislative Assembly of West Bengal.

2. According to the petitioners, a casual vacancy has occurred in the said Constituency on account of the demise of the elected candidate. Therefore, direction has been sought for on the aforementioned terms. Further, the petitioners would state that even for more than one year from the date of the vacancy i.e. 20<sup>th</sup> February, 2022 no steps have been taken by the Election Commission for declaration of bye election to fill up the casual vacancy arising in the said

Legislative Assembly Constituency. Thus, the petitioners would place reliance on the Section 151A of the Representation of the People Act, 1951 wherein a time period of six months has been fixed for conducting the bye election. Admittedly, the election of the returned candidate was challenged before this Court in E.P. No.9 of 2021 by one Mr. Kalyan Chowbey and the matter is still pending and the Court by order dated 16<sup>th</sup> July, 2021 directed that till the disposal of the main election petition, the documents, election papers and the devices connected with the instant case be preserved by the concerned authority who is supposed to be the custodian of such documents and other materials mentioned during the post poll phase. The question would be as to whether the time limit prescribed under Section 151A of the 1951 Act would operate in the facts and circumstances of this case. Section 116 deals with abatement or substitution on death of the respondent in election petition. The said provision states that if before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner

may, within 14 days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit. On account of the demise of the returned candidate the procedure under Section 116 have been followed and notice had been published in the Official Gazette and pursuant to which the respondent nos.5 and 10 herein have been arrayed as parties to the election petition. Further, the said respondent nos.5 and 10 have also been permitted to file written statement in the said election petition. Thus, the election petition does not get abated as the procedure under Section 116 has been followed. In such circumstances, Section 151A of the 1951 Act would not come into play. This very legal issue was decided by the Hon'ble Supreme Court in the case of *Election Commission of India v. Teleangana Rastra Samithi & Anr.* Reported in (2011) 1 SCC 370 wherein it has been held as follows:

“We are, therefore, of the firm view that the introduction of Section 151A in the Act did not alter the position as far as the provisions of Section 84 and consequently 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 151A of the 1951 Act. Article 190(3)(b) of the Constitution

merely indicates that if a Member of a House of a Legislature of 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."

3. In the light of the above position, it cannot be stated that a casual vacancy has occurred within the meaning of Section 150 of the 1951 Act for the purpose of Section 151A of the 1951 Act to come into play. Therefore, the direction sought for in the writ petition cannot be granted at this juncture.

4. With the above observation, the writ petition stands dismissed.

**(T. S. SIVAGNANAM)**  
**ACTING CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**