



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1986 OF 2024

Anil S/o. Shivkumar Dubey,
Aged about 57 years, Occupation:
Business, R/o. Joglekar Plots, Akola
Taluka & District : Akola.

.... PETITIONER.

// **VERSUS** //

1. Election Commission of India,
Through its Chief Election
Commissioner and Secretary,
Nirvachan Sadan, Ashoka Road,
New Delhi – 110 001.
2. The Maharashtra State Election
Commission, Through its State
Election Commissioner, At
1st Floor, New Administrative
Building, Hutatma Rajguru
Chowk, Madam Cama Road,
Mumbai – 400 032.
3. The State of Maharashtra,
Through General Administration
Department, Through its Principal
Secretary, Mantralaya, Mumbai.

.... RESPONDENTS.

Shri A.A.Naik, Adv. a/w. Shri J.B.Gandhi, Advocate for Petitioner.
Ms Neerja Choube, Advocate for Respondent No.1.
Shri Amit Kukde, Advocate for Respondent No.2.
Shri D.V.Chauhan, G.P. a/w Shri H.D.Marathe, AGP for Respondent No.3.

CORAM : **ANIL S. KILOR AND**
SMT. M.S.JAWALKAR, JJ.

DATED : **MARCH 26, 2024.**

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. This petition takes exception to the notification No.ECI/PN/24/2024, dated 16/03/2024 issued by respondent No.1 to the extent of declaration of bye-elections for Assembly Constituency No.30, Akola West, Maharashtra.

The brief facts of the present case are as under :

4. One Shri Gowardhan Mangilal Sharma @ Lalaji was elected from Constituency No.30 Akola West as Member of Maharashtra Legislative Assembly (MLA) on 24/10/2019. The term of the Maharashtra Legislative Assembly commenced from 27/11/2019 and would end on 25/11/2024.

5. On 03/11/2023 Shri Gowardhandas Mangilal Sharma had expired and the seat which he was occupying has fallen vacant. Consequently, the Respondent No.1 issued the impugned notification.

6. In the said backdrop following dates are important for deciding the controversy involved in this writ petition.:

Sr.No.	Dates	Particulars
1.	27.09.2019	Date of issue of gazette notification for 2019 elections.
2.	21.10.2019	Date of poll of 2019 election
3.	24.10.2019	Date of counting
4.	27.11.2019 26.11.2024	Term of Maharashtra Legislative Assembly
5.	03.11.2023	Death of Shri Gowardhan Mangilal Sharma & Lalaji
6.	16.03.2024	Notification regarding bye-election
7.	28.03.2024	Date of issue of gazette notification of bye-election
8.	26.04.2024	Date of poll
9.	04.06.2024	Date of counting
10.	26.11.2024	Expiry of term of Maharashtra Legislative Assembly

7. The issue therefore, involved in the present writ petition, is about the interpretation of proviso (a) to Section 151-A of the Representation of the People Act, 1951 (hereinafter referred to as “the Act of 1951”).

8. Section 151-A of the Act of 1951 deals with the time limit for filling vacancies referred to under Sections 147, 149, 150 and 151 of the Act of 1951. This provision mandates that, the bye-election for

filling any vacancy referred to in the above referred sections shall be held within a period of six months from the date of occurrence of the vacancy. Whereas, proviso (a) to Section 151-A of the Act of 1951 says that nothing contained in Section 151-A shall apply if the remainder of the term of a member in relation to a vacancy is less than one year.

9. As per the petitioner, the words “remainder of term” used in proviso (a) to Section 151-A, refers to the balance term available for the elected member in such bye-election. Whereas, as per the respondents, the said period of one year shall be counted from the date of occurrence of the vacancy.

10. However, this issue is no more *res integra*. The Coordinate Bench of this Court vide judgment dated 12/04/2019 passed in **Writ Petition No.2251 of 2019** (*Sandeep Yashwantrao Sarode ..vs.. Election Commission of India & oth.*) has held thus :

“23. When we consider the expression, "the remainder of the term of a member in relation to a vacancy", employed in clause (a) of the proviso, what comes forth, in a prominent manner, is the presence of definite and indefinite articles, "the" and "a" respectively. Article "the", conveying the certainty or specificity has been used for indicating the meaning of the word "term" and article "a" having indefinite and uncertain characteristic has been used to denote a person named as, "a member". The article "a" is again used to indicate "vacancy" for filling of which the bye-

election could be held. It would mean that while the balance term is definite, a member as well as a vacancy are something which are not yet known or which are still unspecified. The overall meaning of the whole expression, as plainly conveyed by the language used, is that the balance term when reckoned from the date of declaration of the result of bye-poll, would be certain and the "member" contemplated in clause (a) is unspecified and so is a "vacancy", which such unspecified person is going to fill through the bye-election. If this were not so, the legislature would have used the definite article "the" to specify a particular person as the member whose vacancy has arisen owing to his resignation or occurrence of other contingency stipulated in Section 150 of the R.P. Act, 1951. The conclusion is inevitable. The remainder of the term of a member means the remaining term an incoming member would get from the date of declaration of the result of the bye- election from out of total term of five years. (emphasis supplied)

24. Mr. Bhangde, learned Senior Advocate for the ECI in his further attempt to persuade us to his interpretation of clause (a) of the proviso to Section 151-A of the R.P. Act, 1951 invites our attention to the Hindi and Marathi official translations of the clause (a). We have perused them and we are not convinced that these translations of clause (a) of the proviso can be understood to convey a meaning that "the remainder of the term" must always be determined from the date of occurrence of the vacancy and in relation to the member who has resigned from the seat and not from the date on which incoming member is declared elected and also not in relation to such an incoming member.

25. There is one more reason for making such an interpretation, as we have just made for clause (a). If the balance term is to be understood in relation to the member who resigns and, therefore, it is to be reckoned from the date on which his resignation is accepted, in some cases, anomalous situation is likely to arise. To illustrate the point, we may give here one example. An elected representative, after occupying the seat for a period of one year out of the total term of five years, resigns upon completion of one year of the term and his resignation is accepted. The consequent vacancy is then filled by another member through a bye-election held for the seat. The second elected member also resigns and his resignation is accepted, just about a few months, say for instance six months before the expiry of the total period of five years. Realistically speaking, in this case, the balance of the whole term of five years is only six months but, if we go by the interpretation

canvassed on behalf of the ECI, this balance or the remainder of the term has to be reckoned from the date on which the vacancy arose for the first time, on account of resignation of the first elected member, which would always be more than one year though the ground reality is different. This is an anomaly which occurs if the view of the ECI is accepted. But, this is not the intention of the legislature. The intention is to ensure that a member, who is elected in a particular poll held for filling the casual vacancy, is assured of a reasonable term and not something which is ineffective and which makes the assembly seat a ceremonial or symbolic post. In order to avoid such a situation, the legislature has prescribed that the rigor of Section 151-A to hold a bye-election within the period of six months from the date of occurrence of the vacancy would be relaxed in a case where the period an incoming member would get, is less than one year.

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28. In the present case, as the resignation tendered by Mr. Ashish Deshmukh, was accepted by the Speaker on 06.10.2018, the vacancy as contemplated under Section 151-A arose on this very date i.e. 06.10.2018. This vacancy was admittedly available till 18.10.2018, the date on which the present State Legislative Assembly's term is to expire. So, theoretically, the vacancy is available for it's being filled for a term which is of slightly more than an year or to be precise for one year and 12 days. But, one can guess, it is practically impossible to complete the entire process of bye-election and declare the result within the extra period of 12 days that was otherwise available in the present case. The notification for holding of the bye-election was issued on 10.03.2019 and the scheduled date of the bye-poll is 11.04.2019. The result of the election is going to be declared on 23.05.2019. So, if the remainder of the term of an incoming member is to be calculated from anyone of these dates, the incoming member would have such remainder of the term, in relation to Katol Assembly Constituency vacancy, which is less than one year. The remainder of the term, would have to be calculated in this case, as per our interpretation of clause (a) of the proviso, from the date on which the result of the bye-poll is declared. This date would be 23.05.2019. So, from this date, the remainder of the term of the incoming candidate is not going to be of one year or more. This would firmly indicate that the situation in the present case is covered by clause (a) of the proviso and that would mean that it would not be mandatory for the ECI to hold the bye-poll within the period of six months from the date of occurrence of the vacancy and indeed, the scheduled bye-election here is not being

held within this period of six months. Such an action of the ECI being covered by the exception made under clause (a) of the proviso, would not result in violation of the mandate of Section 151-A.”

11. Ms Choube, learned counsel for the respondent No.1- Election Commission has drawn attention of this Court to the fact that an issue as regards interpretation of Section 151-A of the Act of 1951 is pending before the Hon’ble Supreme Court of India in **Special Leave to Appeal (C) No. 200 of 2024**, in the case of *Election Commission of India ..vs.. Sughosh Joshi & Anr.* It is therefore, submitted that this Court may wait till decision in the said matter.

12. Shri Naik, learned counsel for the petitioner, while opposing the said submission, has placed reliance on the judgment of the Hon’ble Supreme Court of India in the case of *Union Territory of Ladakh and others ..vs.. Jammu and Kashmir National Conference and another*, reported in **2023 SCC OnLine SC 1140**, wherein the Apex Court has made it clear that the High Courts will proceed to decide the matters on the basis of the law as it stands. It is not open, unless specifically directed by the Apex Court, to await an outcome of a reference or a review petition, as the case may be. It is further observed

that it is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of the Apex Court, it is the earlier one which is to be followed by the High Courts as held in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680. Thus, following the above referred principles laid down by the Hon'ble Supreme Court of India in the case of *Union Territory of Ladakh* (supra), as there is no specific direction by the Hon'ble Supreme Court of India in the case of *Election Commission of India ..vs.. Sughosh Joshi* (supra) that, the High Court shall wait for the outcome of the said matter and not to decide any case till then we are bound by the law as it stands today and as discussed in the case of *Sandeep Yashwantrao Sarode* (supra).

13. In the circumstances, as the period of less than one year is left as a balance term an incoming member would get from the date of declaration of the result of the bye-election, we have no hesitation to hold that the impugned notification dated 16/03/2024 issued by the respondent No.1 is contrary to proviso (a) to Section 151-A of the Act of 1951. Accordingly, we pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned notification No.ECI/PN/24/2024, dated 16/03/2024 issued by the respondent No.1 to the extent of declaration of bye-elections of the Assembly Constituency No.30 Akola West, Maharashtra is hereby quashed and set aside.
- iii) We further declare that bye-elections for the said Constituency shall not be held.

Rule is made absolute accordingly. No order as to costs.

(SMT. M.S.JAWALKAR, J)

(ANIL S. KILOR, J)

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