IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 235 OF 2026
AND
WRIT PETITION 237 OF 2026
AND
MISCELLANEOUS CIVIL APPLICATION NO. 186 OF 2026
IN
WRIT PETITION 237 OF 2026

1.Pritam Harmalkar, son of Permanand Harmalkar, Aged 49 years, Building No.7, Flat No.M-41, Goa Housing Board Complex, Ponda-Goa. .....Petitioner.

Versus

1. Election Commission of India, Through Secretary, Nirvachan Sadan, Ashoka Road, New Delhi 110 001.

2. The State of Goa, Through the Chief Secretary, Having office at Secretariat, Porvorim Goa.

3. The Chief Electoral Office, Office of the Chief Electoral Officer, Having Office at Altinho, Panaji Goa. ...Respondents.

AND

WRIT PETITION NO.237 of 2026

1. Ankita Kamat, Aged 32 years, Abhinav Cooperative Housing Society, Curti, Ponda, Goa. ...Petitioner.

Versus

1. Election Commission of India, through its Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi 110 001.

2. State of Goa, Through Chief Secretary, Secretariat, Porvorim Goa.

3. The Chief Electoral Officer, Office of the Chief Electoral Officer, Altinho, Panaji Goa. ...Respondents.

AND
MISCELLANEOUS CIVIL APPLICATION NO. 186 OF 2026
IN
WRIT PETITION NO. 237 of 2026

1. Mr. Trajano D'Mello, Son of Mr. Agricio D'Mello, married, aged 77 years, Indian National, National Spokesperson Trinmool Congress, R/o: Peddem, Mapusa, Goa. .....Applicant/Intervenor.

Versus

1. Ankita Kamat, Aged 32 years, Abhinav Cooperative Housing Society, Curti, Ponda, Goa. ...Respondents.

Mr.Akshay Naik, Senior Advocate along with Mr. Chaitanya Padgaonkar, Advocates for the Petitioner in Writ Petition No.235 of 2026.

Mr. Nitin Sardessai, Senior Advocate along with Mr. Terence Sequeira, Advocate for the Petitioner in Writ Peition 237 of 2026.

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar, Advocate for Respondents No.1 and 3 in both the Petitions.

Learned Advocate General along with Mr. Deep D. Shirodkar, Additional Government Advocate for Respondent No.3 in both the Petitions.

Mr. Abhijit Gosavi, Advocate for the Intervenor in Miscellaneous Civil Application No.186 of 2026 in Writ Petition No.237 of 2026.

CORAM: VALMIKI MENEZES &
AMIT S. JAMSANDEKAR, JJ.

Reserved on: 02.04.2026
Pronounced on: 08.04.2026

JUDGMENT: (Per. Valmiki Menezes, J.)

1. Registry to waive office objections and register the matters.

2. Heard Mr. Akshay Naik, learned Senior Advocate with Mr. Chaitanya Padgaonkar, learned Advocate for the Petitioner in Writ Petition No.235 of 2026, Mr. Nitin Sardessai, Senior

Advocate along with Mr. Terence Sequeira, Learned Advocate for the Petitioner in Writ Petition No.237 of 2026, Mr. S. R. Rivankar, Learned Senior Advocate with Mr. Rama Rivankar, Learned Advocate for Respondents No.1 and 3, Senior Advocate Shri. Devidas Pangam, Advocate General for the State of Goa along with Mr. Deep D. Shirodkar, Learned Additional Government Advocate for Respondent No.3 and Advocate Abhijit Gosavi, for the Intervenor.

3. These two petitions impugn Notice dated 15.03.2026 and Notification dated 16.03.2026 of the Election Commission of India (Respondent No.1) declaring bye-elections to the 21-Ponda Constituency, of the Goa Legislative Assembly, to take place on 09.04.2026. Since the grounds of challenge in these Petitions are common, they have been heard and are being disposed of by a common judgement.

4. In both Petitions, the undisputed facts are the following:

The elections to the Legislative Assembly of the State of Goa were held on 14.02.2022 and its results were declared on 10.03.2022. Late Ravi Naik was declared as the winning candidate of 21-Ponda Constituency. Oath was administered to him and 38 other MLAs on 15.03.2022 which is the date on which the term of the Assembly commenced. The term being for five years, the term of the current Assembly ends on 14.03.2027.

Shri Ravi Naik passed away on 15.10.2025 rendering his seat vacant on that date. The end of the term of the MLA, (late Ravi Naik), whose seat fell vacant on his demise, calculated from the date of his taking oath (15.03.2022), is 14.03.2027. The Election Commission issued the impugned Notification for conducting bye-election to the 21-Ponda Constituency on 15.03.2026, which was published in the Gazette on 16.03.2026. According to the election programme, the last date for taking nominations of candidates was declared as 23.03.2026, the date for scrutiny of withdrawal of candidatures was fixed on 24.03.2026 and date by which withdrawal of candidatures was to be recorded was 26.03.2026. The date of polling has been fixed on 09.04.2026, the date of counting of votes on 04.05.2026 which is the date of declaration of the election results.

5. In these undisputed set of facts, the main ground raised in the Petition is that the impugned Notification has been issued contrary to the provisions of Clause (a) of proviso to Section 151-A of the Representation of the People Act, 1951 (RP Act) since the term of the MLA for the Constituency who would now be elected would be of less than one year, even if counted from the date of the election result.

6. These Petitions were granted circulation for 24.03.2026 and time was granted to the Election Commission till 30.03.2026

to consider filing an affidavit in reply and to consider the grounds in the Petitions. The Election Commission has chosen not to file any affidavit in reply but has placed on record Written Submissions apart from advancing oral arguments through Senior Advocate Shri S. R. Rivankar. An intervention was sought by Trajano D'Mello, national spokesperson of one of the contesting political party on whose behalf, submissions were advanced by Shri Abhijit Gosavi, Advocate. Though the State of Goa was not a necessary party to the Petition, but since it is arrayed as a Respondent, it has put in appearance and was represented by the Learned Advocate General for the State of Goa; the Learned Advocate General did express his reservations on representing the State as the State has no role to play in the bye-elections now set down for 09.04.2026. However, we have requested the Learned Advocate General to address us, since a question of interpretation of the provisions of Section 151-A of the RP Act has been raised as the main issue before us. Accordingly, we have heard the Learned Advocate General on the said question.

7. The following submissions have been advanced by the parties to these Petitions:

SUBMISSIONS:

8. The Advocate for the Petitioner Mr. Akshay Naik learned Senior Advocate appearing in Writ Petition No.235 of 2026

advanced the following submissions:

a. That the Notification dated 16.03.2026, directing to hold bye-elections to 21-Ponda Constituency, is contrary to Clause (a) of the proviso to section 151-A of the RP Act. That the Respondent No.1 failed to consider that the remainder of the term of the incoming member in relation to the remainder of the term of member whose seat fell vacant due to his death, was less than one year; it was submitted that the incoming member would hardly get a tenure of about 10 months as a member of the Legislative Assembly as the term of the Assembly expires on 14.03.2027. He further submitted that this being the factual position, the Notification impugned in these Petitions has been issued contrary to the mandate and prohibition contained in Clause (a) of proviso to Section 151-A.

b. It was further submitted that Section 151-A opens with a non-obstante clause, stipulating, that notwithstanding anything contained in Section 147, 149, 150 and 151, a bye-elections for filling any vacancy referred to in any of those Sections is required to be held within six months of the occurrence of the vacancy. He submitted that the main part of this Section prohibits holding of an election, if not notified within six months of the seat falling vacant; the only exception to this mandate, is when the Election Commission

exercises the option, under Clause (b) of proviso to Section 151-A, in issuing a certificate, in consultation with the Central Government, that it is difficult to hold elections within the period of six months mandated by the main Section. The Learned Counsel submitted that these are mandatory provisions and have been introduced by way of an amendment in the year 1996, since prior thereto, there was no requirement to hold bye-elections within any time frame.

c. It was further submitted that apart from the mandate of the main provisions of Section 151-A, the provisions of Clause (a) also provide, independent of the provisions of Clause (b) of the proviso, that bye-elections shall not be held to a vacant seat, if the remainder of the term, that the newly elected member would have, counted from the date of his taking office/swearing-in, was less than one year from that date. The Counsel further submits that undisputedly, the vacancy occurred on 15.10.2025 when the sitting MLA expired, and though the bye-election Notification has been issued within six months of this occurrence, since the remainder of the term of any member who would now be elected in the bye-election, counted even from the date of declaration of results, would be less than a year, considering the term of the Assembly ends on 14.03.2027.

d. The Learned Senior Advocate placed a reliance on the following case law:

i. **Sandeep Yashwantrao Sarode v/s Election Commission of New Delhi and ors[1];**

ii. **Anil Shivkumar Dubey v/s Election Commission of India and 2 Ors[2];**

iii. **Manoj and Anr v/s Maharashtra State Election Commission Mumbai and Ors[3];**

e. It was further submitted that **Sandeep Yashwantrao Sarode**(supra) has considered the submissions of the Election Commission, who, in that case interpreted the provisions of Section 151-A in a manner, reckoning the remainder of the period available to a newly elected member, from the date that the vacancy in the seat arose i.e. the date when the MLA's resignation in that case was accepted. He has further argued that the decision in **Sandeep Yashwantrao Sarode**(supra) has not been challenged by the Election Commission, though it was challenged by one of the Respondents in that matter, before the Supreme Court, which Appeal was dismissed as withdrawn, giving finality to the view taken by the Bombay

[1] 2019 SCC OnLine Bom 629
[2] Judgement dated 26.03.2024 in Writ Petition No.1986 of 2024
[3] 2024 (6) Mh.L.J 541

High Court on the interpretation of the provisions of Section 151-A; it was then contended that the view taken in **Sandeep Yashwantrao Sarode**(supra) was followed in a later case where the same provisions came up for interpretation before the Bombay High Court, in **Anil Dubey** (supra) where a similar Notification was quashed. Even in that case, the Election Commission has chosen not to challenge the Judgment and accepted the same. It was contended that having accepted these two decisions, the Election Commission cannot take a different view of the matter and interpret the time frame of one year referred to in Clause (a) of proviso to Section 151-A to commence from the date the seat fell vacant.

9. The Learned Senior Advocate Mr. Nitin Sardessai for the Petitioner appearing in Writ Petition No.237 of 2026 advanced the following submissions:

i. In addition to adopting the arguments of Learned Senior Advocate Shri Akshay Naik appearing for the Petitioner in Writ Petition No.235 of 2026, it was submitted that the Election Commission, having accepted the ratio laid down in **Sandeep Yashwantrao Sarode** (supra) and followed in **Anil Dubey** (supra) could now not take a contrary stand, despite these being binding precedent for the State of Goa, and hold an election in contravention of the embargo set in

Clause (a) of proviso to Section 151-A. He submitted that the Election Commission has taken a conscious decision in both cases where the Nagpur Bench of this Court has struck down its notification to hold a bye-election, to accept the interpretation of Clause (a) of proviso to Section 151-A. In these circumstances, the Election Commission should not be permitted to proceed with the bye-elections on the basis of the impugned Notification. Reliance was placed on a Judgment of the Supreme Court in **Birla Corporation Ltd v/s Commissioner of Central Excise**[4] to buttress this submission.

ii It was further submitted by the Learned Senior Advocate that the doctrine of Precedence mandates that a Bench of Coordinate strength must follow the view taken by an earlier Bench of the same strength, and cannot refer the matter to a larger Bench, merely because it feels that another view is a better one or because it disagrees with the view earlier taken for different reasons; it was further submitted that judicial discipline must be exercised by the subsequent Bench hearing a similar point unless it finds the earlier judgment to be so very incorrect, that in no circumstances can it be followed.

[4] (2005) 6 SCC 95

Reliance is placed on the following judgments:

a). **Union of India and Others v/s Dhanwanti Devi and Others[5];**

b) **Shah Faruq Shabir and others v/s Govindrao Ramu Vasave and others 2016[6];**

c) **National Insurance Company Limited v/s Pranay Sethi and Others[7].**

iii. It was then submitted that in the undisputed set of facts before this Court, the bar under Article 329 of the Constitution of India, to Courts interfering in election matters would not apply since there is neither the validity of a law relating to the subjects mentioned in Clause (a) thereof involved, nor is the Petitioner bringing into question an election, which is yet to take place. In the present case, according to the Learned Counsel, there would be no cause for the Petitioners to challenge the election of any incoming candidate, in an election Petition, on the grounds set out in the present Petitions. Reliance was placed on **Romaldo Fernandes v/s State of Goa and Others[8].**

[5] (1996) 6 SCC 44
[6](5) Mh.L.J 436
[7] (2017) 16 SCC 680
[8] (2021) 1 HCC (Bom) 139

10. Mr. S.R. Rivankar, Learned Senior Advocate appearing for the Respondent No.1 and 3 in both the Petitions, filed Written Submissions and additional Written Submissions and advanced oral arguments, the substance of which are recorded below:

i. The interpretation of the phrase "remainder of the term" as stated in Clause (a) of the proviso to Section 151-A suggests that there is "full/whole term" and "Part of the term" which relates to an outgoing member and not the incoming member. He submits that the view taken by this Court in **Sandeep Yashwantrao Sarode** (supra) is a wrong view as it is contrary to the earlier view taken by this Court in **Pramod Laxman Gaudadhe v/s Election Commission of India and Others** [9], which was then upheld by the Supreme Court in **Pramod Laxman Gaudadhe v/s Election Commission of India and Others**[10] **.**

ii. He further submitted that though **Sandeep Yashwantrao Sarode**(supra) has considered the Judgment of the Supreme Court rendered in **Pramod Laxman Gaudadhe** (supra), the Nagpur Bench of this Court has misinterpreted the view taken by the Supreme Court, which was a binding

[9] 2018 SCC OnLine Bom 1111
[10] (2018) 7 SCC 550

precedent, holding that the period of one year referred to in Clause (a) of proviso to Section 151-A is to be calculated from the date when the seat for which the bye-election is to be held falls vacant. In these circumstances, the Learned Counsel urges us to refer the present two Petitions to a larger Bench of this Court for reconsideration in view of the wrong interpretation by this Court of **Pramod Laxman Gaudadhe** (supra), made in the Judgment rendered in **Sandeep Yashwantrao Sarode**(supra).

iii. He further submits that the conflict in Judgments arising in the present Petitions may also be referred to a Bench having more than two judges by exercising powers under Rule 8 Chapter I of the Bombay High Court Appellate Side Rules. Reliance was placed to support this submission on **Pradip Chandra Parija & Ors v/s Pramod Chandra Patnaik & Ors** [11] and **Mr.Mohd. Farhan A Shaik v/s The Deputy Commissioner of Income Tax**[12] **.**

[11] 2002 (1) SCC 1
[12] Order dated 28.02.2020 in Tax Appeals No. 51 and 57 of 2012 by the High Court of Bombay at Goa

iv. **It was then submitted that** at least three other High Courts, whilst interpreting the provisions of Clause (a) of proviso to Section 151-A have held that the period from which one year is to be counted, to decide the validity of an election notification, is from the date when the vacancy of the seat arose. It was submitted that the Punjab & Haryana High Court in **Kunal Chanana v/s Election Commission of India and Others** [13], has considered the view taken by this Court in **Sandeep Yashwantrao Sarode**(supra) and has taken a different view, which view was upheld by the Supreme Court whilst dismissing an Appeal against that Judgment. It was then submitted that the Karnataka High Court has also considered these provisions and the Judgment of the Supreme Court in **Pramod Laxman Gaudadhe** (supra) and has taken a different view from that taken by the Bombay High Court.

v. It was further submitted that the Bombay High Court in **Sughosh Joshi v/s The Election Commission of India and Anr** [14] has also taken a different view, though, on an Appeal filed to the Supreme Court the said Judgment has been stayed. This, according to the Learned Senior Counsel was a reason for considering a reference of the view

[13] 2024 SCC OnLine P&H 5146
[14] 2023 SCC OnLine Bom 2659

taken in **Sandeep Yashwantrao Sarode**(supra) to a larger Bench.

vi. It was then argued that the Report of the Committee on Electoral Reforms prior to the amendment of 1996, by which Section 151-A was inserted in the RP Act, suggested amendment in terms of requiring bye-elections, lawfully to be held within six months of the seat falling vacant but also recommended that the vacancy need not be filled if a general election is normally due within one year **from the date of the occurrence of the vacancy,** and not from the date when the newly elected incumbent took office. He submitted that the report and recommendation to Parliament is reflected in the provisions of Section 151-A which should be given interpretation which is in consonance with the recommendation that the one year referred therein is to be calculated from the date of occurrence of the vacancy.

11. The Learned Advocate General, Senior Advocate Shri Devidas Pangam, has advanced the following submissions, to assist the Court at arriving at a decision in the matter.

i. It was submitted that Reports of a Law Commission, which are recommendations cannot be used as an aid to interpret a provision of law, much less to conclude the intention of

Parliament behind such legislation. He submitted that in the present case, though the report recommends the one year to be calculated from the date the vacancy arose, Parliament chose not to enact Section 151-A in those terms but has instead used the words "remainder of the term of a member in relation to a vacancy". He therefore submits that the intention of Parliament was not to accept the recommendation but to enact the provision with a term different from the one recommended, that is to say, not from the date of occurrence of the vacancy but to prohibit elections from being held if the remainder of the term of a newly elected member is less than one year. Reliance was placed on **State of Madhya Pradesh V/s Dewadas and Others**[15]**.**

12. Advocate Abhijit Gosavi for the Intervenor in Miscellaneous Civil Application No.186 of 2026 filed in Writ Petition No.237 of 2026 has advanced the following submissions:

    a. That this court in **Sandeep Yashwantrao Sarode** (supra) has decided the matter and interpreted the provision of section 151-A without looking in the Statement of Objects and Reasons to the amendment to section 151-A of the RP Act. He places reliance on the **Sandeep Yashwantrao Sarode**(supra) is *sub*

[15] (1982) 1 SCC 552

silentio since it was passed without examining the Judgments of the Supreme Court in **Pramod Laxman Gaudadhe** (supra) or discussing the point involved therein or considering the arguments, whilst declaring its interpretation of law.

b. Reliance was placed on **Municipal Corporation of Delhi v/s. Gurnam Kaur**[16] and **State of U.P. & Anr v/s. Synthetics & Chemicals Ltd & Anr**[17]**.**

CONSIDERATIONS

13. Based upon the pleadings of the rival parties, and the rival submissions advanced at the bar, the following points arise for determination in this petition:

A. Whether the judgment of the Bombay High Court of its Nagpur Bench rendered in **Sandeep Yashwantrao Sarode** (supra) interpreting the provisions of Section 151-A of the Representation of the People Act, 1951 constitutes a precedent which is binding on this Court?

B. Whether, in the light of the submissions advanced on behalf of the Election Commission of India, a case has been made out for reference of the view taken in **Sandeep**

[16] 1989 (1) SCC 101
[17] (1991) 4 SCC 139

Yashwantrao Sarode (supra) to a larger bench of this Court?

C. Whether the impugned Notification dated 15.03.2026 and 16.03.2026 to hold bye-elections to fill the vacancy for the 21- Ponda Assembly Constituency of the State of Goa, calls for any interference in writ jurisdiction of this Court?

CONSIDERATIONS ON QUESTION "A"

14. In **Sandeep Yashwantrao Sarode** (supra), the challenge made, was to the legality and correctness of the declaration of the Election Commission in holding bye-elections to fill the casual vacancy which has arisen in the 48-Katol Assembly Constituency on the seat having fallen vacant when the outgoing MLA tendered his resignation which was accepted by the Speaker of the Legislative Assembly of Maharashtra on 06.10.2018. Thus, the seat fell vacant on 06.10.2018. The Election Commission issued a Notification to hold a bye-election to the vacant seat on 11.04.2019. The question which arose before the Court in that case was to the interpretation of Clause (a) of the proviso to Section 151-A of the RP Act, and whether the period of one year referred to in the said Clause was to be reckoned from the date of occurrence of the vacancy or to be reckoned as the remainder

of the period of the term of the outgoing member, counted from the date when the newly elected member takes office.

15. In **Sandeep Yashwantrao Sarode** (supra), this Court formulated four questions for its decision which are found in paragraph 9 of the Judgment and are reproduced below:

> *9.The arguments canvassed across the bar on behalf of both the sides would lead us to say that the controversy raised here has found its expression in a more precise way in four questions, which are follows:*
> *(i) Whether there is a violation of mandate of section 151-A of the R.P. Act, 1951 by the ECI?*
> *(ii) Whether the exceptions created in the proviso to section 151-A, of the R.P. Act, 1951 apply to the present controversy and if so, by which of the clauses, clause (a) or clause (b) or both, is it covered?*
> *(iii) Whether the decision taken by the ECI to hold the bye-election fell within its discretionary power and if so, whether it is exercised reasonably and not arbitrarily and without any discrimination, well tune with the principle of rule of law?*
> *(iv) Whether entertaining this petition would amount to interference in the election process?*

16. In answer to the questions formulated, this Court considered the provisions of Section 150 and 151-A of the RP Act, and has interpreted the proviso of Clause (a) of the Provision to Section 151-A in the following terms:

> *14. It would be clear from the above referred provisions of law that they deal with a situation, where seat of a member elected to the legislative assembly of a State becomes vacant or is declared vacant They also state the manner in which such a contingency is to be dealt with. On the happening of the contingency contemplated in*

section 150 of the R.P. Act, 1951, a statutory duty bears itself upon the ECI to fill the casual vacancy within the stipulated period of time, as provided under section 151-A of the RP. Act, 1951 The duty under section 151-A is imperative in nature, which is discernible from the overall structure of section 151-A The section starts with a non obstante clause making a declaration in terms, "Notwithstanding anything contained in section 142, section 149, section 150 and 151" and proceeds further employing a modal verb "shall", all showing the determinative nature of legislative Instructions and assertions. The legislative determination is that a Casual vacancy, as contemplated under section 150 or, for that matter other cognate sections like section 147 or section 149 or section 151 be filled, in any case, within a period of six months from the date of Occurrence of the vacancy suggesting thereby that it is in the interest of democratic process that no seat of legislative assembly may remain unrepresented for a long period of time An emphatic expression of such a legislative intent, it seems, became necessary because of the fact that the R.P. Act, 1951, as it was enacted, did not contain any such time frame thereby creating a possibility of not holding of election to fill a casual vacancy for indefinite period or very long time. To dispel all the doubts in this regard, section 151-A came to be inserted by an amendment introduced through Act No. 21 of 1996, with effect from 1-8-1996, and the purpose, as we have stated, is clearly visible from the plain meaning of the language used in this section With a view to find support to this conclusion, we also perused the text of the Act No. 21 of 1996, a copy of which has been made available to us. We, however, could not come across any statement of objects and reasons made therein. Nevertheless, the object of this provision can be no different than what we have gleaned just now by considering the plain language of the section.

15. This would enable us to say that the provisions contained in section 151-A of the R.P. Act, 1951, as regards the time line fixed for filling the casual vacancies, are imperative and the time limit would not apply only when the situation is covered by any one of the other or both the exceptions contained in the proviso.

16. Apart from the two exceptions specified in the proviso, there could also be some more exceptions to section 151-A

> *of the R.P Act, 1951, depending upon the facts and circumstances of each case A fair idea about such a proposition can be had from the judgment of the Hon'ble Apex Court in the case of Election Commission of India v Telangana Rashtra Samiti, reported in (2011) 1 SCC 370, wherein the Hon'ble Apex Court has held, where a casual vacancy may have occurred within the meaning of section 150 of the R.P. Act, 1951, it is possible to say that the vacancy has not become available for the purpose of being filled within the time prescribed under section 151-A of the R.P. Act, owing to the pendency of the election petition. This would show that for filling a casual vacancy within the time limit prescribed in section 151-A of the RP Act, it is also required to be examined, if the vacancy has actually become available to be filled or not, and if it has not become so available, the mandate of section 151-A, as regards the time line, would not apply and this could possibly be another exception.*

17. In paragraph 14 of the judgment this Court has specifically taken note of the fact that since Section 151-A came to be inserted in to the Statute Book by an amendment introduced in the year 1996, in the absence of any Statement of Objects and Reasons for such amendment, it rendered its interpretation of Clause (a) holding that the object of the proviso, or the plain language of the Section was to prohibit the holding of a bye-election where the remainder of the period calculated from the date when the newly elected member comes into office, is less than one year.

18. **Sandeep Yashwantrao Sarode** (supra) has then examined the provisions of Clause (a) of the proviso to Section 151-A, and has concluded that the only interpretation on a plain reading of the provision to be given to the reckoning of the time period

of one year, is that such period is to be calculated in relation to date when the incoming member takes charge and not from the date when the outgoing member has vacated his seat. The consideration of Clause (a) of the Proviso is reproduced below:

> *17 Now, the question is, whether or not there is any violation of mandate of section 151 of the R. P. Act, 1951 on the part of the ECI, in the present case.*
> *The answer to the question depends upon the resolution of the second question, that we have posed for ourselves, as hereinabove If the second question is answered in terms that the exceptions given under the proviso to section 151-A of the R.P. Act, 1951, have covered the situation of this case, the answer to the first question would be that there is no violation of mandate of section 151-A as regards the time frame prescribed thereunder In the reverse case, the first question would have to be answered as in the affirmative and we must say, if the answer is going to be in the affirmative, a different situation is going to arise to deal with as the consequences of such a situation are not specifically provided for in the R.P. Act, 1951 and we would then find ourselves landed in wilderness of election law But, for the present, this is only hypothetical and so we would apply ourselves to that situation, only if the occasion arises.*
>
> *18. Upon a careful reading of the proviso to section 151-A, one can say with reasonable certainty that the situation involved herein is squarely covered by clause (a) of the proviso In fact, in our opinion, it is also covered by clause (b) of the proviso. But, for the present, we would express our mind to clarify as to how the present case is covered by clause (a) of the proviso*
>
> *19. According to Mr. Bhangde, learned Senior Advocate, the situation herein is not at all covered by clause (a) of the proviso, for the reason that the expression "the remainder of the term of a member in relation to a vacancy", has to be understood as balance of the whole term of the member, whose seat has become vacant, as contemplated under section 150 of the RP. Act, 1951 and the meaning of this expression cannot be understood de hors the context of section 150 of the R.P Act, 1951. He submits that this is the view taken by the ECI and correctness of this view cannot be doubted He also points out that owing to such a view entertained by the ECI, the ECI, as per the press note dated 9-10-*

2018 (Annexure-D, page 27D), declared that there was no need to hold bye-election to the vacancies from the State of Andhra Pradesh because the remaining term of the members was less than one year from the date of occurrence of the vacancies, which was 20-6-2018, and the term of 16th Lok Sabha was only up to 3-6-2019 He submits that thus, the remainder of the term of a member, for the purpose of clause (a) of the proviso, has always been understood by the ECI as balance term to be reckoned from, not the date of declaration of the result of the incoming candidate but, from the date of occurrence of the vacancy on account of acceptance of the resignation of the previously or firstly elected candidate

20. The argument has been disagreed to by Mr. Bhandarkar, learned Advocate for the petitioner, Mr Ghare and Mr Dangre, learned Advocates for the intervenors, propping the stand of the petitioner They submit that the use of indefinite article "a", in the said expression is significant and it conveys clearly the intention of the legislature that the expression "the remainder of the term must be understood in relation to an incoming member and not the one who has vacated the seat

21. According to us, the language employed in clause (a) of the proviso is unambiguous, plain and clear. It conveys unmistakably the Intention of the legislature and, therefore, we do not think that it would be permissible for us to read the expression in the context of any other section including section 150 of the R.P.ACT, 1951 as a means of external aid for understanding the correct meaning of the language employed in the proviso. This rule, it is needless to say, is the rule of literal interpretation and has been considered to be the first principle on the anvil of which a statute must be interpreted. It is only when the language is ambiguous or unclear that any external help for interpreting a statute can be resorted to. A useful reference, in this regard, may be made to the law laid down by the Hon'ble Apex Court consistently over a period of time in its various judgments, some of which are, S.P. Gupta v. Union of India, reported in 1981 Supp SCC 87, State of Maharashtra v. Marwanjee F. Desai, reported in (2002) 2 SCC 318, and Principal Chief Conservator of Forest v. J.K. Johnson, reported in (2011) 10 SCC 794. Just to lend support to what we have said now, we would like to refer to elucidation of this principle made by the Hon'ble Apex Court in S.P. Gupta v. Union of India, supra, particularly in paragraph 199, in the following words.

"199. But there is one principle on which there is complete unanimity of all the Courts in the world and this is that where the words or the language used in a statute are clear and cloudless, plain, simple and explicit unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation, there is absolutely no room for deriving support from external alas. In such cases, the statute should be interpreted on the face of the language itself without adding, subtracting or omitting words therefrom.

22. As stated earlier, language of clause (a) of proviso to section 151 connotes in the plain and grammatical sense of the words used therein and as such, we are of the view that, it is not necessary for us to understand the expression, in the context of any other section, including section 150 of the RP Act, 1951. This is all the more so because section 151-A begins with a non obstante clause, declaring the exclusion of other sections by the Parliament in the words, "Notwithstanding anything contained in section 147, section 148, section 149, section 150 and section 151". This would necessitate exclusion of the consideration of the aforesaid sections for eliciting and understanding the meaning of the substantive part as well as the proviso part of section 151-A.

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 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.

19. In **Sandeep Yashwantrao Sarode** (supra), this Court has specifically held in paragraphs 22 and 23 thereof that the language deployed to Clause (a) of the Proviso to Section 151-A, if read with the non-obstante clause "Notwithstanding anything contained in section 147, section 148, section 149, section 150 and section 151" with which the main Section opens, leaves no manner of doubt that the words "remainder of the term of a member" means the remaining term the incoming member would get from the date of declaration of the result of the bye-election, in relation to the total term of 5 years. This is the ratio of the judgment of this Court in **Sandeep Yashwantrao Sarode** (supra).

20. The ratio of this judgment and its applicability to another case before the Nagpur Bench of this Court came up in **Anil Dubey** (supra), where the term of the Assembly of 5 years was from 27.11.2019 to 26.11.2024. The seat of the sitting MLA fell vacant due to his death on 03.11.2023 and the Election Commission sought to hold bye-elections by issuing a Notification to that effect on 16.03.2024 fixing the date of poll on 26.04.2024 and the date of counting on 04.06.2024. The result of the bye-election could therefore be known only on 04.06.2024, whilst the term of the Assembly expired on

26.11.2024, which was hardly 5 months. In these set of facts, this Court considered the question, as formulated in paragraph 9 of the said judgment, as to whether words "remainder of the term" used in proviso (a) to Section 151-A of the RP Act refers to the balance term available for the newly elected member in such bye-election or whether the period of one year referred to in the said proviso is to be counted from the date of occurrence of the vacancy.

21. **Anil Dubey**(supra) has considered the ratio of the judgment in **Sandeep Yashwantrao Sarode**(supra) and has concluded that the interpretation of Clause (a) of proviso to Section 151-A, as held in **Sandeep Yashwantrao Sarode** (supra) is to be applied in all cases where the period of less than one year is left as the balance term an incoming member would get from the date of declaration of the result of the bye-election; consequently it held the impugned Notification declaring the bye-election, in contrary to proviso (a) and declared that the bye-election shall not be held.

22. We take note that **Sandeep Yashwantrao Sarode**(supra) was carried to the Supreme Court in SLP (Civil) No.11207/ 2019 by the Respondent in the original petition, and not by the Election Commission of India. That SLP was dismissed by the Supreme Court as withdrawn at the behest of the private Respondent on 01.04.2019. Thus, the Election Commission

accepted the interpretation of the Bombay High Court of Clause (a) of proviso to Section 151-A as rendered in **Sandeep Yashwantrao Sarode**(supra).

The Election Commission of India has also accepted this interpretation in **Anil Dubey**(supra) by not assailing the judgment any further. It is surprising to us that the Election Commission is now heard to be arguing full throat before us that the view taken in **Sandeep Yashwantrao Sarode**(supra) is a wrong view and requires to be referred to a larger Bench since it has not considered a binding precedent rendered by the Supreme Court in **Pramod Laxman Gaudadhe** (supra) where, according to the Election Commission, the same provisions have been interpreted differently.

23. We have perused the judgment of the Hon'ble Supreme Court in **Pramod Laxman Gaudadhe**(supra) and would conclude that in the said judgment of the Supreme Court, the question decided was quite different.

In arriving at the aforementioned conclusion we have had the advantage of perusing the judgment of this Court in **Pramod Laxman Gaudadhe v/s. Election Commission** [18]where the facts are reproduced in paragraph 4 thereof. What

[18] 2018 SCC OnLine Bom 1111

this Court noted was that the resignation of the sitting member of Parliament was accepted on 14.12.2017 and the term of Parliament was up to June, 2019. The bye-election was to take place in May,2018. On facts therefore, the period which was left for the incoming member was more than one year. It was in these set of facts, that this Court rejected the petition. There is no clear ratio laid down in that judgment as it was rendered purely on facts.

24. On an appeal filed before the Supreme Court, the Supreme Court considered exactly the same set of facts, in **Pramod Laxman Gaudadhe** (supra)as can be seen from the observation made in paragraphs 5 and 8 thereof which are reproduced below:

> *"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 vigor 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.

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."

25. After taking note of the fact that even if the election is held in May,2018 the next general election is due in June, 2019 which gave the new member of Parliament a tenure of one year. Further in paragraphs 5 and 8, the Supreme Court refers to the provisions of Section 151-A and then rejected the appeal in the facts of the case holding that the sitting member of Parliament resigned on 08.12.2017, his resignation was accepted on 14.12.2017, the term of the sitting member of Parliament was up to June,2019 and therefore there was more than a year of the term remaining, which justified the holding of the bye-election. The above position has been further clarified in paragraph 18 of the judgment where the Supreme Court, considers the factual position and holds that on facts, the case would not be covered by Clause (a) of proviso to Section 151-A. Paragraph 18 is reproduced below:

"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 12011 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."

26. One of the arguments raised before the Nagpur Bench of this Court in **Sandeep Yashwantrao Sarode**(supra) was that the observations made by the Supreme Court in **Pramod Laxman Gaudadhe**(supra) in paragraph 18 thereof were binding on this Court as the Supreme Court had interpreted the provisions of Clause (a) of proviso to Section 151-A therein. This argument was considered, and after dealing with the contents of the judgment in **Pramod Laxman**

Gaudadhe(supra), and the submissions made of the binding nature of the said judgment, this Court has distinguished that judgment on its facts, and has held that the observations made in paragraph 18 of the judgment, which are reproduced in the preceding paragraph, are not the ratio of the judgment. This Court observed that the observations in paragraph 18 are only in relation to the peculiar facts of that case and rejected the submission. The relevant paragraphs dealing with this argument are reproduced below:

> *"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.

26. According to Mr Bhangde, learned Senior Advocate, the view of the ECI regarding calculation of the balance term also receives support from some of the observations of made by the Hon'ble Supreme Court in the case of Pramod Laxman Gudadhe v Election Commission of India, reported in 2019 (2) Mh LJ (SG) 546 (2018) 7 SLC 550 Referring to the observations made in paragraph 18 of this case, Mr Bhangde submits that the remainder of the term must be calculated from the date of occurrence of the vacancy. This has been opposed to by the learned Advocate for the petitioner and the learned Advocates supporting the petitioner They submit that there is no decision rendered nor any conclusion made in this case as to the manner of reckoning the remainder of the term.

27. On a Closer scrutiny of the judgment in the said case of Pramod Laxman Gudadhe, supra, we find that there is no categorical determination made by the Hon'ble Apex Court that the remainder of the term means the balance term determined from the date of the occurrence of the vacancy. In paragraph 18, the Hon'ble Apex Court bas noted some of the facts and on their basis, has observed that in that case the remainder of the term was not less than one year. It has been observed that factual score of that case showed that the vacancy occurred when the resignation was accepted by the Speaker of Lok Sabha on 14-12-2017, that it was beyond any dispute that the next general election of the Lok Sabha was in June, 2015, and then a conclusion was reached in words, Therefore, the remainder of the term is not less than one year." It is significant to note here that in that case, a casual vacancy had arisen for a Lok Sabha seat on 14 12 2017 and, as seen, from the facts noted in paragraph 5 of the judgment, the election to fill the vacancy

was proposed in the month of May, 2018 and the High Court had found that the effective period, which the new member would get in that case was only up to March, 2019 It was in the context of these facts, the Hon'ble Apex Court held that when the elections to Lok Sabha were slated to be held in March, 2019, in any case, the remainder of the term was not going to be less than one year further held that the High Court was not correct to consider the application of Code of Conduct to a period, which was part of the remainder of the term, to say that the effective term was less as RP Act, 1951 did not contemplate so it was also observed that it was the period alone that should be the governing factor subject to the pendency of the election petition because that is not controlled by non obstante clause It would be thus clear that the observations made by the Hon'ble Apex Court are only in relation to these peculiar facts noted in the judgment and they do not constitute the principle that the remainder of the term is something which must be reckoned from the date of occurrence of the vacancy We express our respectful disagreement with the learned Senior Advocate accordingly."

27. Thus, this Court has considered whether **Pramod Laxman Gaudadhe**(supra) lays down a binding precedent on the interpretation of Clause (a) of proviso to Section 151-A, and has categorically negated this submission, holding that the said Judgment does not lay down any interpretation on the date from which the period of one year is to be reckoned in Clause (a) of the proviso. We are of the considered opinion that the interpretation of this Court of what is decided in **Pramod Laxman Gaudadhe**(supra) is itself a precedent and would be binding on a Coordinate Bench of the same High Court. The Judgment is certainly not per incurium since it has considered in detail the observations of the Supreme Court in **Pramod**

Laxman Gaudadhe (supra) and then held that the observations in paragraph 18 thereof are not the ratio of the Judgment but is a decision based on the peculiar facts. We are, therefore, bound by the observations of this Court in paragraph 27 of the Judgment of **Sandeep Yashwantrao Sarode**(supra), wherein this Court has held that the Supreme Court, in **Pramod Laxman Gaudadhe**(supra) has not given any categorical determination that the remainder of the term referred to in Clause (a) of proviso to Section 151-A means the balance term determined from the date of the occurrence of the vacancy.

28. We are fortified in our view that the observations in paragraph 26 of this Court in **Sandeep Yashwantrao Sarode**(supra) are binding precedent and therefore binding on this Bench, by the observations of the Supreme Court in the following case law.

In **Union of India and Others v/s Dhanwanti Devi and Others**[19], the Supreme Court, considering a similar argument, where the submission made was that the observations in a Judgment did not operate as ratio *decidendi*

[19] (1996) 6 SCC 44

to be followed as a precedent since the same were *per se per incurium*. The relevant passages of the Judgment are quoted below:

> *"9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that Hari Krishan Khosla case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (1) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts. (11) statements of the principles of law applicable to the legal problems disclosed by the facts, and (1) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be b found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The*

concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents. It would, therefore, be necessary to see whether Hari Krishan Khosla case would form a binding precedent. Therein, admittedly the question that had arisen and was decided by the Bench of three Judges was whether solatium and interest are payable to an owner whose land was acquired under the provisions of the Central Act? On consideration of the facts, the relevant provisions in the Central Act and the previous precedents bearing on the topic, the Court had held that solatium 9 and interest are not a part of compensation. It is a facet of the principle in the statute. The Central Act omitted to provide for payment of solatium and interest since preceding the acquisition the property was under requisition during which period compensation was paid to the owner. The position obtained and enjoyed by the Government during the period of requisition continued

after acquisition. The same principle was applied without further h elaboration on entitlement to payment of interest of an owner It is true that the decisions relied on by Shri Vaidyanathan on the principle of payment of interest as part of compensation in respect of land acquired were brought to a the attention of this Court for discussion. What would be its purport would be considered a little later Suffice it to say for the present that the finding that solatium and interest are not payable for the lands acquired under the Central Act as part of compensation is a binding precedent. Obviously. therefore, this Court followed the ratio therein in Distt. Judge case. The contention, therefore, that Hari Krishan Khosla case cannot be treated as a binding precedent since therein there is no ratio but a conclusion without discussion, is not tenable and devoid of force. In that view, it is not necessary to discuss in extenso the effect of the decisions cited by Shri Vaidyanathan. Equally, the contention of Shri Vaidyanathan that the ratio in Hari Krishan Khosla case is in conflict with the ratio in Satinder Singh case which was neither distinguished nor overruled and that the decision of a coordinate Bench cannot have the effect of overruling decision of another coordinate Bench, cannot be given countenance. The effect of the ratio in Satinder Singh case[3] will be considered a little later, suffice it to state that there is no conflict in the ratio of these two cases if the facts in Satinder Singh case are closely analysed and the principle laid down therein is understood in its proper perspective. Therefore, Hari Krishan Khosla case[2] cannot be held to be per incuriam nor has it the effect of overruling the ratio decidendi of Satinder Singh."

29. Thus, as held in **Union v/s. Dhanwanti** (supra), to understand and appreciate the binding force of a decision it is necessary to see what were the facts in the case on which the decision was taken; no Judgment can be read as a statute but

must be read in context of the facts of the case. We are of the considered opinion that this is precisely what this Court has done in **Sandeep Yashwantrao Sarode**(supra), in paragraph 26 and 27 thereof, where at it has considered the specific facts, in the circumstances of which **Pramod Laxman Gaudadhe**(supra) was decided by the Supreme Court, and then gone on to hold that the observations in paragraph 18 of the said Judgment does not categorically determine the interpretation of Clause (a) of proviso to Section 151-A.

30. In **National Insurance Company Limited v/s Pranay Sethi and Others**[20], the Supreme Court was also considering earlier decisions of that Court which dealt with the concept of binding precedent. We find the relevant passages of that Judgment relevant to the context of the present case.

> *(15) Presently, we may refer to certain decisions which deal with the concept of binding precedent*
> *16. In State of Bihar v Kalika Kuer, it has been held (SCC p. 454 para 10)*
> *-10 an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or*

[20] (2017) 16 SCC 680

not raised before the court or more aspects should have been gone into by the court deciding the matter earlier hut it would not be a reason to say that the decision was rendered(per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction.

The Court has further ruled (SCC p. 454, para 10)

10. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt than earlier decision is not correct on merits

18. In this regard, we may refer to a passage from Jaisri Sahu Rajdewan Dubey 28 (AIR p. 88. para 10)

"10 Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled It sometimes happens that an earlier decision29 given by a Bench is not brought to the notice of a Bench30 hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure b to be followed when two such conflicting decisions are placed before a later Bench The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Gundavarupu Seshamma v Kornepati Venkata Narasimharao[3]t that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn. Vol. 22, Para 1687. pp. 799-800

1687. the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords

In Katragadda Virayva v. Katragadda Venkata Subbavya it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches,

vide also the decision of the Nagpur High Court in DD. Bilimoria v Central Bank of India[33] The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court.

19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline

20. In the context, we may fruitfully note what has been stated in Pradip Chandra Parija v. Pramod Chandra Patnaik In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench[35] disagreeing with the three-Judge Bench[36] decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated (SCC p. 4. para 6)

6 In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges, But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrest that in no Circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out. as has been done here, the reasons why it could not agree with the earlier judgment.

21 In Chandra Prakash v. State of U P37, another Constitution Bench dealing with the concept of precedents stated thus (SCC p 245, para 22)

"22 The doctrine of binding precedent is of utmost importance in the administration of our judicial system It promotes certainty and consistency in judicial decisions Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in Raghubir Singh 38 held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges....

Be it noted, Chandra Prakash[31] concurred with the view expressed in Raghubir Singh 38 and Pradip Chandra Parija[34]

28. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra 45 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength, Though the judgment in Rajesh case was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari[1] but had been guided by Santosh Devin We have no hesitation that it is not a binding precedent on the co-equal Bench.

The argument raised on behalf of the Election Commission that this Court in **Sandeep Yashwantrao Sarode**(supra) is per incurium the observations made in **Pramod Laxman Gaudadhe** (supra) must be rejected in the light of the observations made in aforementioned Judgment of the Supreme Court, more particularly in the light of the observations that an earlier decision of a co-equal Bench binds the Bench of the same strength. We therefore reiterate that the precedent laid down on the interpretation of the provisions of Clause (a) of proviso to Section 151-A by a Coordinate Bench of this Court in **Sandeep Yashwantrao Sarode**(supra) is binding on us and must be followed by us in its application to the facts and challenge in the present

Petition. In the light of what we have held in the preceding paragraphs, we answer Question A above, holding that the Judgment rendered in **Sandeep Yashwantrao Sarode**(supra) is a binding precedent and therefore the view taken therein binds this Coordinate Bench.

31. We are also of the opinion that the Judgment of this Court in **Sandeep Yashwantrao Sarode**(supra) is not rendered *sub silentio* since the particular point of law involved, i.e. the interpretation of Clause (a) of proviso to Section 151-A was considered from every possible angle, including by considering the Judgment of **Pramod Laxman Gaudadhe** (supra) and holding that the same did not apply on facts and that the same is not a ratio and precedent for the interpretation of Clause (a) of proviso to Section 151-A. Further, as held in **State of Madhya Pradesh v/s. Dewadas** (supra), the Reports of the Law Commission or for that matter of the Committee for Electoral Reforms cannot be considered for the purpose of interpreting the aforementioned provision or to conclude the intention of Parliament whilst legislating Section 151-A, more so since what was legislated by Parliament, is in fact contrary to the recommendation of the Report. We are fortified in our view by the observations of the Supreme Court in **State of Madhya Pradesh v/s. Dewadas** (supra) which are reproduced below:

"7. In Narendrasingh case, the State Government being desirous of preferring an appeal against acquittal under sub-section (1) of Section 378, made an application for grant of leave under sub-section (3) and the proposed memorandum of appeal was annexed thereto. An application was filed on behalf of the State Government stating that the prayer for grant of leave under sub-section (3) be treated as a part of the appeal itself and not separately. It was further prayed that the case, which had originally been registered as a Miscellaneous Criminal Case relating to the grant of leave, should be registered as a 'Criminal Appeal. The matter was, therefore, placed before a Division Bench. The learned Judges of the High Court referred to the report of the Law Commission and observed that the legislative object in re-enacting the provisions of Section 417 of the old Code with the addition of the new provision contained in sub-section (3) of Section 378 of the Code, was that there had to be a further scrutiny of a State appeal by the court even prior to the stage of admission, requiring the court to consider at the very outset whether the appeal should be entertained or not. It was only after the appeal was entertained with the 'leave' of the Court that it had to be heard for admission and it may be dismissed summarily without notice to the other side. It was further observed that the legislature brought about the change while accepting the recommendation of the Law Commission to retain the power of the High Court to dismiss State appeals summarily without notice to the respondents.

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11.There is no warrant for the view expressed by the High Court in Nerendrasingh case that the legislative object in re-enacting the provisions of Section 417 of the old Code with the addition of the new provision contained in sub-section (3) of Section 378 of the Code, was that there was to be a preliminary scrutiny of a State appeal by the court even prior to the stage of admission, requiring the court to consider at the very outset whether the appeal should be entertained or not, and that it was only after

the appeal was entertained with the leave of the court that it was to be beard for admission under sub-section (1) of Section 384 read with sub-section (1) of Section 385 of the Code. The High Court appears to rest its decision mare on the Report of the Law Commissions than the actual language of sub-section (3) of Section 378 of the Code, in coming to the conclusion that sub-section (3) contemplated two stages Sub-section (3) of Section 378 is not susceptible of any such construction. The Law Commission in its 48th Report had observed

While one may grant that cases of unmerited acquittal do arise in practice, there must be some limit as to the nature of cases in which the right should be available.

And, keeping in view the general rule in most common law countries not to allow an unrestricted right of appeal against acquittals, it recommended

With these considerations in view, we recommend that appeals against acquittals under Section 417, even at the instance of the Central Government or r the State Go Government, should be allowed only if the High Court grants special leave

It may be pointed out that even now the High Court can summarily dismiss an appeal against an acquittal, or for that matter, any criminal appeal. (Section 422, Criminal Procedure Code)

Therefore, the amendment which are recommending will not be so radical a departure as may appear at the first sight. It will place the State and the private complainant on equal footing Besides this, we ought to add that under Section 422 of the Code, it is at present competent to the appellate court to dismiss the appeal both of the State and of the complainant against acquittal at the preliminary hearing.

The recommendations of the Law Commission were not, however, fully carried into effect. Sub-section (3) of Section 378 of the Code was introduced by Parliament to create a statutory restriction against entertainment of an appeal filed by the State Government or the Central Government under sub-section (1) or sub-section (2) of Section 378 from an order of acquittal passed in a case instituted otherwise than upon complaint. At the same time, Parliament re-enacted sub-sections (3) and (4) of Section 417 as sub-sections (4) and (5) of Section 378, which deal with an order of acquittal -passed in any case instituted upon a complaint. The result of this has been that there is a difference in the procedure regulating entertainment of State appeals against acquittals under sub-section (1) or sub-section (2) of Section 378 and appeals against acquittals filed by a complainant under sub-section (5) of Section 378. On a comparison of the language employed in sub-section (3) and sub-section (4) of Section 378, it is clear that the legislature has chosen to treat State appeals in a manner different from appeals by a complainant in the matter of preferring appeals against acquittals. In the case of an appeal from an order of acquittal passed in a case instituted otherwise than upon complaint preferred by the State Government or the Central Government under sub-section (1) or sub-section (2) of Section 378, the Code does not contemplate the making of an application for leave under sub-section (3) thereof, while the making of an application under sub-section (4) of Section 378 is a condition precedent for the grant of 'special leave' to a complainant under sub-section (5). The difference in language used in sub-section (3) and sub-section (4) of Section 978 manifests the legislative intent to preserve a distinction between the two classes of appeals by prescribing two different procedures in the matter of entertainment of appeals against acquittals. It, therefore, follows that the State Government or the Central Government may, while preferring an appeal against acquittal under sub-section (1) or sub-section (2) of Section 378, incorporate a prayer in the memorandum of appeal for grant of leave under sub-section (3) thereof, or make a separate application for

grant of leave under sub-section (3) of Section 378, but the making of such an application is not a condition precedent for a State appeal. In the State of Rajasthan v. Ramdeen", this Court dealt with a case where the Rajasthan High Court granted the State Government leave to appeal under sub-section (3) of Section 378 of the Code, but dismissed the appeal filed there-after on the ground that it had not been filed within 90 days from the judgment appealed from and was therefore barred by limitation under Article 114 of the Limitation Act, 1963. The application for grant of leave under sub-section (3) contained all the requisites of a memorandum of appeal and had been filed within 90 days from the date of order of acquittal but was not accompanied by a petition of appeal. It was held that an appeal under sub-section (1) of Section 378 was an integral part of an application for leave to appeal under sub-section (3). Accordingly, the order passed by the High Court dismissing the appeal as barred by limitation was set aside. In dealing with the question, it was observed: (SCC p. 633, para 8)

Under the law it will be perfectly in order if a composite application is made giving the necessary facts and circumstances of the case along with the grounds which may be urged in the appeal with a prayer for leave to entertain the appeal. It is not necessary, as a matter of law, that an application for leave to entertain the appeal should be lodged first and only after grant of leave by the High Court an appeal may be preferred against the order of acquittal. If such a procedure is adopted, as above, it is likely, as it has happened in this case, the appeal may be time-barred if the High Court takes more than 90 days for disposal of the application for leave. The possibility that the High Court may always in such cases condone the delay on application filed before it does not, in law, solve the legal issue. The right conferred by Section 378(1), CrPC, upon the State to prefer an appeal against acquittal will be jeopardised if such a procedure is adopted, for in certain cases it may so happen that the High Court may refuse to exercise its discretion to condone the delay. The right conferred under the section

cannot be put in peril by an interpretation of Section 378, CrPC which is likely to affect adversely or even perhaps to destroy that right.

The view expressed by the High Court in Narendrasingh case being in conflict with the decision of this Court in Ramdeen case must be overruled."

32. This brings us to the second Question for determination, i.e. Whether, in the light of the submissions advanced on behalf of the Election Commission of India, a case has been made out for reference of the view taken in **Sandeep Yashwantrao Sarode** (supra) to a larger bench of this Court?

33. Having held that **Sandeep Yashwantrao Sarode**(supra) is a precedent binding on us, we would only have to examine whether the submission of the Election Commission that this is a fit case to exercise our powers under Rule 8 Chapter I of the Bombay High Court Appellate Side Rules, to have the issue involved herein to be answered more conveniently by a larger Bench.

At the outset, we must observe that this is not a case where there are two conflicting decisions of Coordinate Benches of the Bombay High Court. All decisions of the Bombay High Court on the interpretation of Clause (a) of proviso to Section 151-A are consistent. **Sandeep Yashwantrao Sarode**(supra) also examines the submission that the view

taken by the Supreme Court in **Pramod Laxman Gaudadhe** (supra) is a binding ratio, and rejects that submission by holding that the view taken by the Supreme Court in **Pramod Laxman Gaudadhe** (supra) does not constitute a determination made by the Apex Court on the interpretation of Clause (a) of proviso to Section 151-A. Therefore, there is hardly any case made out for a reference to a larger Bench of this issue.

34. The provisions of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules provides that if it appears to any Judge that a matter more advantageously heard by a Bench of two or more Judges, who may report to that effect to the Chief Justice who shall make such order as he thinks fit. This is not a case where there is a conflicting decision, as was the case in **Mohammad Farhan Shaik** (supra), cited by the Election Commission before us, since we see no conflicting view taken by our High Court on the point. We therefore reject the argument that a case has been made out to exercise powers under Rule 8 of Chapter I of the Appellate Side Rules for making a reference to a larger Bench in view of there being no conflict in the Judgments, worth their reference.

35. The third point for determination is whether the impugned Notification dated 15.03.2026 and 16.03.2026 to hold bye-elections to fill the vacancy for the 21- Ponda Assembly

Constituency of the State of Goa, calls for any interference in writ jurisdiction of this Court?

36. Certain dates need to be taken note of for effectively deciding this point. The elections to the Legislative Assembly of the State of Goa were held on 14.02.2022 and its results were declared on 10.03.2022. Late Ravi Naik was declared as the winning candidate of 21-Ponda Constituency. Oath was administered to him and 38 other MLAs on 15.03.2022 which is the date on which the term of the Assembly commenced. The term being for five years, the term of the current Assembly ends on 14.03.2027.

Shri Ravi Naik passed away on 15.10.2025 rendering his seat to be vacant on that date. The Election Commission issued the impugned Notification for conducting bye-election to the 21-Ponda Constituency on 15.03.2026, which was published in the Gazette on 16.03.2026.

37. The last date for taking nominations of candidates was declared on 23.03.2026, the date for scrutiny of withdrawal of candidatures was set down on 24.03.2026 and date by which withdrawal of candidatures was to be recorded was 26.03.2026. The date of polling has been fixed on 09.04.2026, the date of counting of votes 04.05.2026. Thus, the date by which a newly elected MLA would be declared would be

04.05.2026, though he would be perhaps sworn in on some date thereafter.

Two other dates for calculating the period of one year for the purpose of Clause (a) of proviso to Section 151-A are relevant; the end of the term of the outgoing MLA, late Ravi Naik, if counted from the date of his taking oath (15.03.2022) is 14.03.2027. For the purpose of the main provision of Section 151-A, the period of six months within which the elections are required to be held, to comply with the mandate is by 06.05.2026. The term of the Goa Legislative Assembly expires on 14.03.2027. We also note that it is not the case of the Election Commission that it has obtained a certificate seeking to postpone the elections and depart from the mandate of the six months under these provisions, in terms of Clause (b) of proviso to Section 151-A.

38. Applying the interpretation that this Court has arrived at on the provisions of Clause (a) of proviso to Section 151-A in **Sandeep Yashwantrao Sarode**(supra), and considering that the date on which the result of the upcoming election would be announced on 04.05.2026, we observe that the remainder of the period reckoned from this date till 14.03.2027 (when the term of the Assembly expires) is just about nine months. The impugned Notification dated 16.03.2026 is therefore issued in contravention of the bar under Clause (a) of proviso to Section 151-A. The said

Notification issued by the Election Commission of India is therefore arbitrary, issued contrary to Clause (a) of proviso to Section 151-A and is therefore liable to be quashed and set aside. Consequently, we pass the following Order:

ORDER

A. We declare that the impugned Notification dated 16.03.2026 issued by the Election Commission of India is contrary to the provisions of Clause (a) of proviso to Section 151-A. Considering that the remainder of the period left for the person who might have been elected in the bye-elections to the 21-Ponda Constituency, to represent the Constituency in the Assembly is less than one year, the said Notification is therefore arbitrary, and issued contrary to Clause (a) of proviso to Section 151-A of the Representation of the People's Act. Consequently, we quash and set aside the impugned Notification dated 16.03.2026.

B. We make Rule absolute in terms of prayer clause (A) of Writ Petition No.235 of 2026 and prayer clause (a) in Writ Petition No.237 of 2026.

C. In view of the disposal of the Writ Petitions No.235 of 2026 and Writ Petition No.237of 2026 and since we have heard the Learned Counsel for the Intervener in Miscellaneous Civil

Application No.186 of 2026, nothing survives in the application and the same stands disposed of.

39. After pronouncement of our Judgment, Learned Senior Advocate Shri Rivankar for the Election Commission prays for stay of the Judgment. He submits that the Election Commission has recorded casting of 171 postal ballots and other ballots apart from which elaborate arrangements have been made for conducting elections which are to take place on 09.04.2026, i.e. tomorrow.

40. Considering that we have declared the impugned Notification to be contrary to the provisions of Clause (a) of the proviso to section 151-A of the RP Act, we do not consider the prayer for stay to be tenable. The consequence of the declaration issued by us that the impugned Notification is contrary to Clause (a) of proviso to Section 151-A, must follow since the bye-elections are now declared to be a nullity. We therefore reject the application for stay of the Judgment.

AMIT S. JAMSANDEKAR, J. **VALMIKI MENEZES, J.**

Signed by: MARIA SUZANA REBELLO
Designation: Personal Assistant
Date: 08/04/2026 19:00:42