

A ELECTION COMMISSION OF INDIA

v.

TELEANGANA RASTRA SAMITHI & ANR.

(Civil Appeal No. 10244 of 2010)

DECEMBER 03, 2010

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[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Representation of the People Act, 1951 – ss. 151A, 84, 98, 101 and 150 – State Legislative Assembly – Resignation by members – Vacancies notified in official gazette – Election Commission with-holding bye-elections to two constituencies due to pendency of election petitions – Challenged to – Direction by High Court to hold bye-elections in two casual vacancies in State Legislative Assembly – Held: Not sustainable – Vacancy in order to be filled up in a bye-election, must be available for being filled up – Article 190 provides that seat of the member becomes vacant on acceptance of his resignation by Speaker and would result in creation of casual vacancy – It does not introduce any element of compulsion on Election Commission to hold a bye-election ignoring the provisions of s. 84 – Proceeding u/s. 84 has to run its full course, particularly for the purposes of s.8A – Provisions of ss. 150 and 151 would be attracted which does not prescribing time limit for filling up such vacancy – Introduction of s. 151A prescribing time limit for filling up vacancy, did not alter the position of s. 84 and ss. 98(c) and 101(b), since although casual vacancy in which election petitions were pending, may have occurred within the meaning of s.150, cannot be held to have become available for the purposes of being filled up within the time prescribed u/s. 151A – Constitution of India, 1950 – Articles 354 and 190(3)(b) – Election Laws – Interpretation of statutes.

s. 151A – Interpretation of – Explained.

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*ss. 150, 84 and 151A – Ratio in *D. Sanjeevayya's case that when vacancy is caused by resignation of a member of the House where election petition is pending, Election Commission not bound u/s. 150 to hold bye-election immediately after a vacancy arises but entitled to suspend taking action u/s. 150 till decision in election petition u/s. 84 was known – Subsequent insertion of s. 151A – Effect of s. 151A on D. Sanjeevayya's case – Explained.*

Twelve members of the A. P. State Legislative Assembly resigned from their membership to claim a separate statehood. The vacancies were notified in the official gazette. The appellant-Election Commission issued notification to hold bye-elections to fill up 10 clear vacancies. However, it did not issue notifications to hold bye-elections to two constituencies due to pendency of the election petitions. The respondent-Committee filed a writ petition challenging the order of the Election Commission not to hold bye-elections in the two constituencies. The High Court directed the appellant to hold bye-elections in the two casual vacancies in the State Legislative Assembly. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. The key words in Article 190 of the Constitution of India, 1950 relating to disqualification of members of both the Houses of the Legislature of a State and deals with vacation of seats, are that if a Member resigns a seat and such resignation is accepted by the Speaker or the Chairman, his seat shall thereupon become vacant. In such event, it would result in the creation of a casual vacancy within the meaning of Part IX relating to bye-elections which contains Section 147 and Sections 149 to 151A of the Representation of the People Act, 1951. If such casual vacancy occurs in the

A State Legislative Assemblies or the State Legislative Councils, the provisions of Sections 150 and 151 are attracted, which do not, however, prescribe any time limit for such vacancy to be filled up by the Election Commission. The provisions of Section 150 are relevant
 B to the facts of the instant case since the case is with regard to the A.P. State Legislative Assembly. The provision of Section 150 gives rise to the apparent conflict regarding the duty of the Election Commission to fill up such vacancies in view of the provisions of
 C Section 84. According to the provisions of Section 84, in addition to claiming a declaration that the election of all or any of the returned candidates is void, an election petitioner can claim a further declaration that he himself or any other candidate has been duly elected. While
 D Article 190(3)(b) provides that upon resignation of a seat by an elected member, if accepted, creates a vacancy, which, in turn, attracts the provisions of Part IX, a different note is struck by the latter part of Section 84 which cannot be lost sight of. If the election of the member who resigns is unchallenged, there is no difficulty in
 E harmonizing the provisions of Section 151A with the rest of the Sections included in Part IX and Section 8A of the 1951 Act. It is only when an election petition is filed under Section 84 of the Act that the latter part of the Section comes into play. [Paras 24, 25 and 26] [486-F-H; 487-A-H; 488-A-D]
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1.2. In **D. Sanjeevayya's* case while considering the effect of Article 190(3)(b) of the Constitution, it was held that the vacancy caused by the decision of the Speaker did not become a *vacancy available for being filled up and/or capable of being filled up* till a declaration was either made or refused under the latter part of Section 84. Notwithstanding the intervention of Section 151A by way of amendment with effect from 1st August, 1996, the

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position remains the same. The only effect on account of such declaration under Article 190(3)(b) is that a time limit was fixed for holding bye-elections in respect of casual vacancies. As regards the question whether a vacancy caused on account of any of the contingencies contemplated in Sections 147 and 149 to 151 can be said to be an available vacancy for the purposes of Section 151A of the 1951 Act, it is significant that in Section 151A neither Section 84 nor Sections 98(c) and 101(b) have been mentioned. The casual vacancies referred to in Sections 147 and 149 to 150 in the State Legislative Assembly and the State Legislative Council, are referred. What was not indicated in the said provisions were provided in Section 151A with the two exceptions carved out in the proviso. Section 151A prescribed a time limit within which a bye-election is to be held to fill up any vacancy referred to in Sections 147 and 149 to 151 of the 1951 Act. Therefore, the Division Bench of the High Court was clearly wrong in coming to a finding that the non-obstante clause of Section 151A, which was not available, when the decision in **D. Sanjeevayya's* case was rendered, altered the whole legal scenario and rendered the decision in **D. Sanjeevayya's* case to be no longer good law; and that in view of Section 151A, the provisions of Section 84 or 98(c) or 101(b) became redundant upon a seat being declared vacant by the Speaker of the House under Article 190(3)(b) of the Constitution of India. It cannot be said that with the introduction of Section 151A in the 1951 Act, it was the clear intention of the legislature to wipe out the effects of **D. Sanjeevayya's* case where the decision had been rendered in the light of the provisions of Section 150 where no time limit had been provided for filling up casual vacancies; and that section 151A provides that when such casual vacancy arises, the Election Commission has to fill up the vacancy by holding bye-elections within six months from the date of

- A occurrence of the vacancy. Any other interpretation of
 Section 151A would render the provisions of Sections 84,
 98(c), 101(b) and 8A of the 1951 Act otiose, which could
 not have been the intention of the Legislature, which
 would otherwise have clearly indicated as such in the
 B proviso to Section 151A. [Paras 31 and 32] [491-F-H; 492-
 A-H; 493-A]

**D. Sanjeevayya vs. Election Tribunal Andhra Pradesh
 and Ors. AIR 1967 SC 1211 - relied on.*

- C 1.3. A vacancy in order to be filled up in a bye-
 election, must be available for being filled up. In a
 situation contemplated by the latter half of Section 84 and
 its consequences as reflected in Sections 98(c), 101(b)
 and 8A of the 1951 Act, it cannot be said that a vacancy
 D in such a situation would be a vacancy available for being
 filled up by a bye-election, particularly in a situation where
 allegations of corrupt practices have been made which,
 if proved, provides for disqualification under Section 8A
 of the Act. Simply by submitting his resignation, a
 E successful candidate against whom allegations of corrupt
 practices are made, cannot escape the consequences of
 Section 8A of the Act, if the same are ultimately found to
 be proved. [Para 33] [493-B-D]

- F 1.4. The Representation of the People Act, 1951 is a
 complete Code for the conduct of elections by the
 Election Commission of India appointed under Article 324
 of the Constitution. Therefore, the provisions of Article
 190(3)(b) of the Constitution have to be read along with
 the provisions of the 1951 Act. Section 84 cannot be
 G rendered otiose by holding that all vacancies on account
 of the said provision of the Constitution become
 immediately available for being filled up by way of a bye-
 election. The same reasoning applies in regard to Section
 151A and its impact on the latter part of Section 84
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thereof. A proceeding under Section 84 has to run its full course, particularly for the purposes of Section 8A of the Act. Therefore, the introduction of Section 151A did not alter the position as far as the provisions of Section 84 and consequently 98(c) and 101(b) of the 1951 Act, since although a casual vacancy may have occurred within the meaning of Section 150 of the 1951 Act, those vacancies in which election petitions were filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151A of the 1951 Act. Article 190(3)(b) of the Constitution does not introduce any element of compulsion on the Election Commission to hold a bye-election ignoring the provisions of Section 84 of the Act. In such cases, there is a little hesitation in holding that such casual vacancies are not available for being filled up and the Commission will have to wait for holding elections in such Constituencies until a decision is rendered in regard to the latter part of Section 84 of the 1951 Act, during the life of the House. The view expressed by the High Court that a case has to be decided in accordance with the laws as existing on the date of adjudication, while salutary in principle, are not attracted to the facts of the instant case, in view of the provisions of Section 84 of the 1951 Act. [Paras 34 and 35] [493-H; 494-A-H; 495-A]

1.5. The judgment and order of the High Court is set aside and the writ petition filed by the respondent No.1 for a direction to hold bye-elections for the 28-Vemulawada Assembly Constituency and 29-Sircilla Assembly Constituency is dismissed. [Para 36] [495-B-C]

Sri Thomas Mates Gudinjo vs. Election Commission of India, New Delhi and Ors. AIR 2002 Karnataka 232; Shri Venkataramana Devaru vs. State of Mysore AIR 1958 SC 255; Reserve Bank of India vs. Peerless General Finance

- A *and Investment Co. Ltd. and Ors.* (1987) 1 SCC 424; *O.P. Singla and Anr. vs. Union of India and Ors.* (1984) 4 SCC 450; *Krishan Kumar vs. State of Rajasthan and Ors.* (1991) 4 SCC 258; *Sultana Begum vs. Prem Chand Jain* (1997) 1 SCC 373; *Central Bank of India vs. State of Kerala and Ors.*
- B (2009) 4 SCC 94; *Loknath Pradhan vs. Birendra Kumar Sahu* AIR 1974 SC 505; *Jyoti Basu vs. Debi Ghosal and Ors.* (1982) 1 SCC 691; *Consumer Education and Research Society vs. Union of India and Ors.* (2009) 9 SCC 648; *Baliram Waman Hiray vs. Justice B. Lentin and Ors.* (1988) 4 SCC 419; *Lalji Haridas vs. State of Maharashtra* AIR 1964 SC 1154; *Indira Nehru Gandhi vs. Shri Raj Narain and Anr.* 1975 Supp. SCC 1; *Kanwar Lal vs. Amar Nath Chawla and Ors.* (1975) 3 SCC 646 – referred to.
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Case Law Reference:

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|---|------------------------|--------------|---------|
| D | AIR 2002 Karnataka 232 | Referred to. | Para 12 |
| | AIR 1958 SC 255 | Referred to. | Para 18 |
| | (1987) 1 SCC 424 | Referred to. | Para 18 |
| E | (1984) 4 SCC 450 | Referred to. | Para 18 |
| | (1991) 4 SCC 258 | Referred to. | Para 18 |
| | (1997) 1 SCC 373 | Referred to. | Para 18 |
| F | (2009) 4 SCC 94 | Referred to. | Para 19 |
| | AIR 1974 SC 505 | Referred to. | Para 20 |
| | (1982) 1 SCC 691 | Referred to. | Para 20 |
| | (2009) 9 SCC 648 | Referred to. | Para 21 |
| G | (1988) 4 SCC 419 | Referred to. | Para 29 |
| | AIR 1964 SC 1154 | Referred to. | Para 29 |
| | 1975 Supp. SCC 1 | Referred to. | Para 29 |
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(1975) 3 SCC 646

Referred to.

Para 29

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Relied on.

Paras 31,
32, 33

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From the Judgment & Order dated 30.6.2010 of the High
Court of Judicature, Andhra Pradesh at Hyderabad in Writ
Petition No. 14443.

Meenakshi Arora, Poli Katakai for the Appellant

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Indira Jaising, ASG, D. Ramakrishna Reddy, Sonam
Anand, J. Ramachander Rao, P. Venkat Reddy, B.
Ramamurthy, Anil Kumar Tandale for the Respondents.

The Judgment of the Court was delivered by

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ALTAMAS KABIR, J. 1. Leave granted.

2. The Election Commission of India has filed this appeal
against the judgment and order dated 30th June, 2010, passed
by the Division Bench of the Andhra Pradesh High Court in Writ
Petition No.14443 of 2010 filed by the Respondent, Telangana
Rastra Samithi, challenging the decision of the Commission not
to hold bye-elections to 28-Vemulawada and 29-Sircilla
Assembly Constituencies in the State of Andhra Pradesh. The
writ petition involving the holding of bye-elections to casual
vacancies in the State Legislative Assembly, was allowed by
the High Court by its impugned judgment by applying the literal
rule of interpretation. It was held that the provisions of Section
151A of the Representation of the People Act, 1951,
hereinafter referred to as 'the 1951 Act', were mandatory and
that the pendency of election petitions and the uncertain
consequences that might follow would not in any manner dilute
the effect of Section 151A, especially when the Speaker of the
Assembly had already notified the vacancies as contemplated

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A under Article 190(3)(b) of the Constitution read with Section 150 of the aforesaid Act and had directed the Appellant herein to hold bye-elections for filling up the vacancies for the two aforesaid Assembly Constituencies along with bye-elections already notified for ten other Assembly Constituencies.

B 3. Briefly stated, the facts indicate that in order to press for a separate Telangana State, a Joint Action Committee was formed with all political parties which took a decision that all the members of the Legislative Assembly of the respective political parties should resign. Consequently, 12 members
C submitted their resignations from the membership of the Andhra Pradesh State Legislative Assembly to the Speaker of the Assembly on 14th February, 2010. On receipt of the said resignations, the Speaker ordered that the resultant vacancies be notified. The said notification was duly published in the
D Andhra Pradesh Gazette (Part II Extraordinary) dated 14.02.2010. The Election Commission of India issued a Press Note dated 21.06.2010 under Section 30 of the 1951 Act, notifying its decision to hold bye-elections to fill up 10 clear vacancies according to the programme indicated therein. The
E bye-elections to 28-Vemulawada and 29-Sircilla Assembly Constituencies were not notified on account of the fact that election petitions were pending in which the petitioners had sought to be declared elected. Accordingly, there being 10 clear vacancies in the State Legislative Assembly of Andhra
F Pradesh, the Commission decided to hold bye-elections to fill up the 10 clear vacancies as per programme indicated. The decision of the Election Commission of India, hereinafter referred to as "the Commission", not to hold bye-elections in the two aforesaid constituencies was challenged in the writ
G petition, which was ultimately allowed.

4. The question raised in the writ petition was whether Section 151A read with Sections 84, 98, 101 and 150 of the 1951 Act, was mandatory or only directory. A question was also

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raised as to whether Section 151A of the above Act is subject A
to Article 324 of the Constitution. Since Section 151A of the
1951 Act is the focal point of the case made out by the writ
petitioners, the same is extracted hereinbelow :

“151A. Time limit for filling vacancies referred to in B
sections 147, 149, 150 and 151.— Notwithstanding
anything contained in section 147, section 149, section
150 and section 151, a bye-election for filling any vacancy
referred to in any of the said sections shall be held within
a period of six months from the date of the occurrence of C
the vacancy:

Provided that nothing contained in this section shall
apply if—

(a) the remainder of the term of a member in relation to a D
vacancy is less than one year; or

(b) the Election Commission in consultation with the
Central Government certifies that it is difficult to hold the
bye election within the said period.

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5. The High Court took the view that Sections 147, 148,
149, 150, 151 and 151A of the 1951 Act appear in Part IX
which deals with bye-elections. Part V of the aforesaid Act,
which deals with the conduct of general elections and Part III,
do not prescribe any time limit obliging the Commission to F
conduct elections within a period of 6 months after expiry of the
term of the Assembly. Section 15 of the Act provides that
general elections shall be held for the purpose of constituting
a new legislative assembly on the expiration of the duration of
the existing Legislative Assembly or on its dissolution. The G
proviso thereto prohibits a general election at any time before
six months prior to expiry of the term of the Assembly. Such
prohibition, however, does not apply to a case where the
Legislative Assembly is dissolved. Interpreting the provisions

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A of Section 151A of the 1951 Act, the High Court observed that
 it is the only provision in the said Act which prescribes a time
 limit for filling casual vacancies both in the Rajya Sabha and
 the Lok Sabha and in the State Legislative Assemblies and
 State Legislative Councils by holding the bye-elections within
 B a period of 6 months from the date of the occurrence of the
 vacancies.

6. Analysing the provisions of Sections 84, 98(c) and 101
 of the 1951 Act, the High Court held that the said sections are
 enabling in nature, enabling an election petitioner to claim a
 C declaration that the election of the returned candidate is void
 and for a further declaration that he or any other candidate had
 been duly elected. The High Court recorded the submission
 made on behalf of the Commission that if the bye-election to a
 constituency is not stayed and if a candidate who files an
 D election petition eventually gets such a declaration, and if a bye-
 election is held consequent upon a resignation of a Member,
 it could result in an impossible situation. On behalf of the
 Commission it was also submitted that the provisions of
 Sections 150 and 151 of the 1951 Act should be construed
 E harmoniously. The High Court, however, rejected the
 submissions made on behalf of the petitioner and took the stand
 that in view of the *non-obstante* clause in Section 151A, such
 harmonious construction was ruled out and that even otherwise,
 grant of additional relief of declaration that the election petitioner
 F had been elected was not the rule.

7. On the basis of its aforesaid findings the High Court,
 despite the decision of this Court in *D. Sanjeevayya Vs.*
Election Tribunal Andhra Pradesh and others [AIR 1967 SC
 1211 = 1967 (2) SCR 489], held that the submissions made
 G on behalf of the Election Commission that the provisions of
 Section 151A of the Representation of the People Act, 1951,
 should be interpreted so as not to render Sections 84, 98 and
 101 otiose, was unsustainable. It was also held that a Court
 should decide a case as per the law as on the existing date of
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adjudication. The High Court, therefore, allowed the writ petition and directed elections be held in the two constituencies referred to hereinabove, since in its view ignoring the provisions of Section 151A of the 1951 Act would amount to violation of Article 327 and valid law made by Parliament.

8. Appearing for the Election Commission, learned Advocate, Ms. Meenakshi Arora submitted that the approach of the High Court in the impugned judgment and the final conclusion reached in this case was completely contrary to the views expressed by this Court in *D. Sanjeevayya's* case (Supra). Ms. Arora submitted that the said decision fully covered the question raised in the present Election Petition and the High Court had erred in trying to distinguish the same on the sole ground that the said decision had been rendered at a point of time when Section 151A had not been introduced into the 1951 Act.

9. Ms. Arora submitted that the issue to be resolved in this case is the apparent conflict between the provisions of Sections 84, 98(c) and 101(b) of the 1951 Act and Section 151A thereof in the light of Article 190 (3)(b) of the Constitution of India. It was further submitted that the question to be answered in this case is whether the directions contained in Section 151A of the 1951 Act indicating that notwithstanding anything contained in Sections 147, 149, 150 and 151 thereof, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy, barring the two exceptions indicated in the proviso, are directory in nature or mandatory. The same has to be considered along with the provisions of Sections 84, 98(c) and 101(b) of the 1951 Act and Article 190(3)(b) of the Constitution, which provides that once a Member of a House resigns from the House of the Legislature of a State and the same is accepted by the Speaker, the seat shall become vacant.

10. Ms. Arora submitted that all these questions had fallen

- A for consideration in *D. Sanjeevayya's* case (supra) and had been duly answered, though not in the context of Section 151A of the 1951 Act. The learned counsel urged that the introduction of Section 151A in the 1951 Act with effect from 1st August, 1996, did not alter the situation to any great extent since even after the introduction of Section 151A, the question still remains as to what would happen in the event a declaration prayed for under the latter part of Section 84, was made by the Election Commission, in terms of Section 98(c) and 101(b) of the said Act.

- C 11. Ms. Arora submitted that the decision in *D. Sanjeevayya's* case (Supra) was rendered in relation to the provisions of Section 150 of the 1951 Act in the context of both Article 190(3)(b) of the Constitution and the apparent contradiction in Sections 84, 98(c) and 101(b) of the 1951 Act and would be equally applicable to the instant case, since the same question is involved regarding the relief contemplated in the latter part of Section 84 of the 1951 Act.

- E 12. Ms. Arora urged that the provisions of Section 151A, by their very nature made it clear that the same were directory and not mandatory in nature. It was urged that apart from the two exceptions carved out in the proviso, there was no mention of Sections 84, 98(c) or even 101(b) in the amended provisions, which the Legislature, if it had so intended, could have also included in the proviso. In this connection, Ms. Arora referred to a Division Bench decision of the Karnataka High Court in *Sri Thomas Mates Gudinjo vs. Election Commission of India, New Delhi and Ors.* [AIR 2002 Karnataka 232], wherein R.V.Raveendran, J. (as His Lordship then was) while delivering the judgment for the Bench, took note of the decision of this Court in *D. Sanjeevayya's* case (supra) and held as follows:

H “Section 151A no doubt seeks to ensure that no Constituency remains unrepresented for more than six

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months. But it is not unconditional. It is subject to two exceptions i.e. where the remainder of the term of a member in relation to a vacancy is less than one year or where the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period. Further the Non obstante clause is limited in its application to Sections 147, 149, 150 and 151. The non obstante clause does not refer to Section 84 or 98 (c) or 101. It therefore follows that Section 151A will have no application if an Election Petition is pending where the prayer is not merely a challenge to the election of the elected candidate, but also seeks a declaration that the petitioner or some one else should be declared as having been elected under Sections 84 read with Section 101 of the Act."

13. Ms. Arora submitted that the judgment and order of the Andhra Pradesh High Court was not sustainable and was liable to be set aside.

14. Learned Additional Solicitor General (ASG), Ms. Indira Jaisingh, while reiterating Ms. Arora's submissions on the relevant provisions of the 1951 Act and the Constitution of India, contended that as would be evident from Sections 112 and 116 of the 1951 Act, election petitions are filed and adjudicated not merely in the private interest of the contesting candidates, but also in public interest to ensure that corrupt practices are eliminated and the constituency is represented by the candidate lawfully elected. The learned ASG submitted that it is for such reason that elections were not notified in two of the twelve vacancies caused by the resignation of twelve legislators, as election petitions under Section 84 of the 1951 Act were pending in respect thereof. The learned ASG further submitted that the Court was required to consider whether the Election Commission was under any compulsion to hold bye-elections in the constituencies in respect whereof election petitions had been filed and were pending, having regard to the provisions of Section 151A of the 1951 Act.

A 15. It was then reiterated that according to the rules of interpretation, an attempt should be made to harmonize apparently conflicting provisions within the same enactment instead of declaring one of the contradicting provisions to be ultra vires. The learned ASG urged that although there appears
 B to be an apparent conflict between Article 190(3)(b) of the Constitution and Section 151A of the 1951 Act on the one hand and Sections 84, 98(c) and 101(b) of the said Act on the other, the said provisions were capable of being harmonized in a manner so that such apparent conflict stood resolved.

C 16. It was further contended that Sections 8A, 80A, 84, 98, 99 and 101 of the 1951 Act are intended to serve a public purpose, namely, the eradication of corrupt practice and to ensure that the candidate declared elected had indeed been lawfully elected and that is why an election petition does not
 D abate on the death of the sole petitioner. The learned ASG urged that both the above-mentioned provisions of the 1951 Act and the provisions of Section 151A thereof are intended to serve the public interest. While a time limit has been introduced in Section 151A for conducting bye-elections to maintain a duly
 E elected Legislative Assembly, the public interest is also served by ensuring the purity of the election process. It was also urged that the various provisions would have to be harmonized so as to apply the provisions of Section 151A to all bye-elections, except to those in respect of which exceptions had been carved
 F out in the proviso and also in relation to constituencies where election petitions were pending.

17. Yet another facet of the learned ASG's submissions was in regard to the powers vested in the High Courts under Section 80A of the 1951 Act. It was submitted that such power
 G could not be taken away by implication and the election petition would have to be allowed to reach its logical conclusion. The learned ASG relied primarily on the decision in *D. Sanjeevayya's case* (supra) and the decision of the Karnataka High Court in *Sri Thomas Mates Gudinhjo's case* (supra),
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which had been rendered after the introduction of Section 151A, A
following the ratio in *D. Sanjeevayya's* case.

18. On the question of harmonious construction, the
learned ASG also relied on the decisions of this Court in (i) *Shri*
Venkataramana Devaru vs. State of Mysore [AIR 1958 SC B
255]; (ii) *Reserve Bank of India vs. Peerless General Finance*
and Investment Co. Ltd. & Ors. [(1987) 1 SCC 424]; (iii) *O.P.*
Singla & Anr. vs. Union of India & Ors. [(1984) 4 SCC 450];
(iv) *Krishan Kumar vs. State of Rajasthan & Ors.* [(1991) 4
SCC 258]; (v) *Sultana Begum vs. Prem Chand Jain* [(1997) C
1 SCC 373]; etc., where it has been uniformly stated that where
there appears to be an inconsistency between two provisions
in the same statute, the enactment has to be read as a whole
and the conflicting provisions have to be so construed so as
to avoid a clash as far as possible. The said principle has been D
very lucidly explained in *Sultana Begum's* case (*supra*),
paragraph 10 whereof is extracted hereinbelow :

"10. The rule of interpretation requires that while
interpreting two inconsistent, or, obviously repugnant
provisions of an Act, the Courts should make an effort to E
so interpret the provisions as to harmonize them so that
the purpose of the Act may be given effect to and both the
provisions may be allowed to operate without rendering
either of them otiose."

19. With regard to the *non-obstante* clause in Section F
151A of the 1951 Act, the learned ASG placing reliance on the
decision of this Court in *Central Bank of India vs. State of*
Kerala & Ors. [(2009) 4 SCC 94], submitted that since Section
151A does not refer to Sections 84, 98, 99 and 101, its G
provisions could not override the provisions of the said Sections
which would have to be given their full flow. The learned ASG
submitted that it was for the Court to maintain the balance
between two public interests by restricting the application of
Section 151 A to only those vacancies which were available

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- A for being filled up, including such vacancies where no election
petition was pending.

20. Mr. D. Ramakrishna Reddy, learned Senior Advocate
appearing for the Respondent No.1, on the other hand
B contended with reference to the decision in *D. Sanjeevayya's*
case (supra), that when a vacancy is declared in the Legislative
Assembly by the Speaker under Article 190(3)(b) of the
Constitution, the election petition could not and did not survive
as the Speaker's decision was final. Learned counsel
C submitted that the aforesaid decision had been rendered in the
context of Section 150 of the 1951 Act where no time limit had
been fixed and where Section 151A was yet to find a place in
the statute book and could not be relied on for the purpose of
this case as had been held by the High Court in its impugned
D judgment. Mr. Reddy, while referring to the decision of this Court
in *Loknath Pradhan vs. Birendra Kumar Sahu* [AIR 1974 SC
505], laid particular emphasis on another decision of this Court
in *Jyoti Basu & Ors. vs. Debi Ghosal & Ors.* [(1982) 1 SCC
691], wherein it was held that though the right to elect was
fundamental to democracy it was a statutory right which would
E have to be construed strictly according to the statute. Mr. Reddy
submitted that with the introduction of Section 151A in the 1951
Act with effect from 1st August, 1996, it was the clear intention
of the legislature to wipe out the effects of *D. Sanjeevayya's*
case where the decision had been rendered in the light of the
F provisions of Section 150 of the said Act where no time limit
had been provided for filling up casual vacancies.

21. Mr. Reddy lastly referred to and relied on the decision
rendered by this Court in *Consumer Education and Research*
G *Society vs. Union of India & Ors.* [(2009) 9 SCC 648]. He drew
our attention to paragraph 61 of the judgment in which in the
context of Sections 147 and 149 of the 1951 Act it was
observed that the said provisions dealt with casual vacancies
in the House of the People on account of the seat of a Member
becoming vacant or being declared vacant or his election being
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declared void. In such context it was further observed that Section 151A provides that when such casual vacancy arises, the Election Commission has to fill up the vacancy by holding bye-elections within six months from the date of occurrence of the vacancy.

22. The rival contentions on the issue under consideration have been occasioned by the introduction of Section 151A in Part IX of the Representation of the People Act, 1951, with effect from 1st August, 1996. Part IX of the said Act which deals exclusively with Bye-elections contains Section 147 and Sections 149 to 151 which deal with casual vacancies in the Council of States (Rajya Sabha), the House of the People (Lok Sabha), the State Legislative Assemblies and the State Legislative Councils. Prior to the introduction of Section 151A in the 1951 Act, no time limit had been set for filling up the casual vacancies contemplated in the different elected bodies, either under Section 147 or Section 149 to 151. Section 151A was introduced in the 1951 Act to address the lacuna and to make provisions for holding of bye-elections for filling any vacancy referred to in Sections 147 and 149 to 151 within a period of six months from the date of occurrence of the vacancy, barring the two exceptions carved out in the proviso to Section 151A itself. What is of vital importance in this case is the choice of the words "a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of occurrence of the vacancy". The question is when does such vacancy occur. Is it on the date on which the resignation is made to the Speaker of the House or is it from the date when the vacancy becomes available for being filled up? This is the same question which fell for decision in *D. Sanjeevayya's* case (supra), though Section 151A of the 1951 Act was not available at that time and the decision was rendered in the context of Article 190(3)(b), Sections 84, 98(c), 101(b) and Section 150 of the 1951 Act.

23. Article 190 of the Constitution falls under the provisions

A relating to disqualification of members of both the Houses of the Legislature of a State and deals with vacation of seats. We are concerned with the provisions of Section 190(3)(b) of the Constitution, which read as under :-

B "190. Vacation of seats – (3) If a member of a House of the Legislature of a State –

(a)

C (b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant:

D Provided that in the case of any resignation referred to in sub clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

F 24. The key words in the above provision are that *if a Member resigns a seat and such resignation is accepted by the Speaker or the Chairman, his seat shall thereupon become vacant* (Emphasis supplied). In such event, it would result in the creation of a casual vacancy within the meaning of Part IX relating to bye-elections which contains Section 147 and Sections 149 to 151A. If such casual vacancy occurs in the State Legislative Assemblies or the State Legislative Councils, the provisions of Sections 150 and 151 are attracted, which do not, however, prescribe any time limit for such vacancy to be filled up by the Election Commission. Since in the instant case we are concerned with the A.P. State Legislative Assembly, the provisions of Section 150 are relevant to the facts of the case and are extracted hereinbelow :-

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"150. Casual vacancies in the State Legislative Assemblies. - (1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

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(2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be."

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25. It is the aforesaid provision of Section 150 which gives rise to the apparent conflict regarding the duty of the Election Commission to fill up such vacancies in view of the provisions of Section 84 which provides as follows :-

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"84. Relief that may be claimed by the petitioner - A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."

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26. According to the provisions of Section 84, in addition to claiming a declaration that the election of all or any of the returned candidates is void, an election petitioner can claim a further declaration that he himself or any other candidate has been duly elected. It is this question which fell for consideration in *D. Sanjeevayya's* case (supra) giving rise to an apparent

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- A conflict between the provisions of Article 190(3)(b) of the Constitution and Section 84 of the 1951 Act. While Article 190(3)(b) provides that upon resignation of a seat by an elected member, if accepted, creates a vacancy, which, in turn, attracts the provisions of Part IX, a different note is struck by the latter part of Section 84 which cannot be lost sight of. In *D. Sanjeevayya's* case (*supra*) although the provisions of Section 151A were not available, this Court felt that there was no finality in the vacancy caused by the resignation of a member of the House where an election petition was pending. If the election of the member who resigns is unchallenged, there is no difficulty in harmonizing the provisions of Section 151A with the rest of the Sections included in Part IX and Section 8A of the 1951 Act. It is only when an election petition is filed under Section 84 of the Act that the latter part of the Section comes into play and is, thereafter, reflected in Sections 98(c) and 101(b) of the said Act.

27. In *D. Sanjeevayya's* case (*supra*), this Court while considering the apparent conflict between Article 190(3)(b) of the Constitution and Sections 150, 84 and 98 of the 1951 Act, came to the conclusion that it was not permissible to interpret Section 150 of the Act in isolation without reference to Part III of the Act which prescribes the machinery for calling in question the election of a returned candidate. Their Lordships further observed that a returned candidate could not get rid of an election petition filed against him merely by resigning his seat from the legislature, whatever be the reason for his resignation. Although not stated in the judgment, the ramifications of an order under Section 84 are felt in Section 8A dealing with disqualification on the grounds of corrupt practices. Such an eventuality cannot be avoided by the returned member simply by resigning his seat in the Legislative Assembly and the provisions of Section 150 would, therefore, have to be read in conjunction with Section 84. Their Lordships, therefore, ultimately held that in such cases the Election Commission was not bound under Section 150 of the Act to hold a bye-election

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forthwith, but it was entitled to suspend taking action under the said section till the decision in the election petition under Section 84 was known.

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28. In its impugned judgment the High Court dealt with the decision of this Court in *D. Sanjeevayya's* case (supra) in the following terms :

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"*Sanjeevayya* ratio is of no help to ignore the enacted provision nor ECI can call back on exercising power under Article 324 of Constitution. Therefore, pendency of election petition and the uncertainty of consequences there from are neither a reason nor rationale to ignore Section 151A and classify casual vacancies into 'clear vacancies' and 'not clear vacancies'. Article 190(3)(b) of the Constitution does not admit such differentiation. Insofar as bye-elections are concerned, when once a declaration is made under Section 150 of RP Act by the Speaker – a vacancy that arises as contemplated under Constitution and/or the relevant statute; Section 151A comes into play and the bye-elections to the casual vacancies that arises under Sections 147, 149, 150 and 151 shall have to be conducted by ECI within the period mandated by the Parliament.

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Sanjeevayya was a case where a member's election was impeached before the Election Tribunal. During its pendency, the successful candidate submitted resignation and invoked public law remedy before this Court. He unsuccessfully sought mandamus to ECI to hold election as per Section 150 of RP Act. The pendency of election petition and Sections 86, 98(C) and 150 of RP Act (without any time limit for conduct of bye-election) became all important statutory facts for construction of the provisions. The Supreme Court considered that, "*no time limit is fixed in the Section for the Election Commission to call upon Assembly Constituency concerned to elect*

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A a person for filling the vacancy", that, Section does not
 say that "*the Election Commission shall hold a bye-*
 election "*forthwith*" or "*immediately*" and that in the facts
 of that case, Election Commission is not bound under
 B Section 150 of RP Act to hold bye-election forthwith (see
 paras 5 and 6 of AIR). Needless to mention that the case
 involved construction of Section 150 in the context of
 Sections 84 and 98(C) of RP Act at the time when Section
 151A was not in RP Act.

C There was some debate before us that Act 21 of 1996
 which inserted Section 151A not being a piece of
 legislative invalidation (or validation), *Sanjeevayya* covers
 the *lis*. We are afraid we cannot accept the submission. It
 is well settled that the construction of provision by the Court
 D before such provision is amended or substituted is an
 exercise of interpretation of the law as existed and does
 not and should not be treated as covering the situation after
 express enactment amending the provisions of Law so
 construed earlier."

E 29. In order to justify its departure from the decision of this
 Court in *D. Sanjeevayya's* case (supra), the Division Bench of
 the High Court instead relied on the decision of this Court in
Baliram Waman Hiray vs. Justice B. Lentin & Ors. [(1988) 4
 SCC 419], wherein, the decision in *Lalji Haridas vs. State of*
 F *Maharashtra* [AIR 1964 SC 1154], which was a decision in
 relation to the proceedings taken by the Income Tax Officer
 under Section 37(4) of the Income Tax Act, 1922, was relied
 upon. The question involved therein was that the said
 proceedings before the Income Tax Officer were judicial
 G proceedings within the meaning of Section 193 of the Indian
 Penal Code. For the purposes of Section 195(1)(b) of the
 Code, reliance was also placed on the decision of this Court
 in *Indira Nehru Gandhi vs. Shri Raj Narain & Anr.* [1975 Supp.
 SCC 1] and *Kanwar Lal vs. Amar Nath Chawla & Ors.* [(1975)
 3 SCC 646], regarding the changes in the law effected by the
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amendments which were held to repel the submissions made therein on behalf of the Respondent that the expenses incurred by a political party could be identified with the election of a candidate and that such expenditure was to be added to the election expenses of a candidate as being authorized by him. This Court instead held that expenses incurred or authorized in connection with the election of a candidate by a political party would not be deemed to be and would not ever be deemed to have been expenditure in connection with the election incurred or authorized by the candidate. The High court observed that legislative changes were relevant in considering the binding nature of the precedent of the Court on record and that such a precedent may cease to be an authority in view of the subsequent changes made by competent legislature. On the basis of such conclusions, the High Court held that even if the statement of objects and reasons of the amending Act did not specifically refer to *Sanjeevayya*, the new legal regime alone must be looked into by the Court.

30. In its impugned judgment the Division Bench of the High Court also held that the submission made on behalf of the counsel for the Election Commission that Sections 150 and 151 of the 1951 Act should be harmoniously construed, was ruled out in view of the *non-obstante* clause in Section 151A.

31. We are afraid that we are unable to agree with the reasoning of the Division Bench of the High Court in its attempt to distinguish the decision of this Court in *D. Sanjeevayya's* case (supra) on the basis that the subsequent inclusion of Section 151A in the 1951 Act nullified the ratio of the decision in *D. Sanjeevayya's* case (supra) and that in view of Section 151A, the provisions of Section 84 or 98(c) or 101(b) became redundant upon a seat being declared vacant by the Speaker of the House under Article 190(3)(b) of the Constitution of India.

32. The decision in *Sanjeevayya's* case (supra) involved the causation of a casual vacancy on account of resignation by the elected candidate while an election petition under Section

- A 84 of the Act was pending. The effect of Article 190(3)(b) of the Constitution was considered in the facts of the said case and it was held that the vacancy caused by the decision of the Speaker did not become a *vacancy available for being filled up and/or capable of being filled up* (Emphasis supplied) till
- B a declaration was either made or refused under the latter part of Section 84. Notwithstanding the intervention of Section 151A by way of amendment with effect from 1st August, 1996, the position remains the same. The only effect on account of such declaration under Article 190(3)(b) is that a time limit was fixed
- C for holding bye-elections in respect of casual vacancies. The all important question is whether a vacancy caused on account of any of the contingencies contemplated in Sections 147 and 149 to 151 can be said to be an available vacancy for the purposes of Section 151A of the 1951 Act. It is significant that in Section 151A neither Section 84 nor Sections 98(c) and
- D 101(b) have been mentioned. Instead, what is referred to are the casual vacancies referred to in Sections 147 and 149 to 150 in the State Legislative Assembly and the State Legislative Council. What had not been indicated in the said provisions were provided in Section 151A with the two exceptions carved
- E out in the proviso. Section 151A prescribed a time limit within which a bye-election is to be held to fill up any vacancy referred to in Sections 147 and 149 to 151 of the 1951 Act. The Division Bench of the High Court was, therefore, clearly wrong in coming to a finding that the *non-obstante* clause of Section 151A,
- F which was not available, when the decision in *D. Sanjeevayya's* case (supra) was rendered, altered the whole legal scenario and rendered the decision in *D. Sanjeevayya's* case (supra) to be no longer good law as declared by this Court. Although, an attempt has been made to differentiate between the facts of
- G *D. Sanjeevayya's* case (supra) and this case, we are unable to accept the interpretation of Section 151A in support of such contention. Any other interpretation of Section 151A would render the provisions of Sections 84, 98(c), 101(b) and 8A of the 1951 Act otiose, which could not have been the intention
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of the Legislature, which would otherwise have clearly indicated as such in the proviso to Section 151A. A

33. At this stage, it would be apposite to consider another aspect of the matter regarding the meaning of the expression "vacancy" for the purpose of Part IX of the aforesaid Act. In this behalf we are inclined to agree with the decision rendered in *D. Sanjeevayya's* (supra) case and the submissions of the learned Additional Solicitor General that in order to be filled up in a bye-election, a vacancy must be available for being filled up. In a situation such as that contemplated by the latter half of Section 84 and its consequences as reflected in Sections 98(c), 101(b) and 8A of the 1951 Act, it cannot be said that a vacancy in such a situation would be a vacancy available for being filled up by a bye-election, particularly in a situation where allegations of corrupt practices have been made which, if proved, provides for disqualification under Section 8A of the said Act. Simply by submitting his resignation, a successful candidate against whom allegations of corrupt practices are made, cannot escape the consequences of Section 8A of the Act, if the same are ultimately found to be proved. B
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34. The various decisions cited do not appear to have any relevance as far as the facts of this case are concerned. The object with which the 1951 Act was enacted is reflected in the Preamble which reads as follows :-

"The Act to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the legislature of each State, the qualifications and disqualifications, the membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections." F
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The Act is a complete Code for the conduct of elections by the Election Commission of India appointed under Article 324 of the Constitution which provides for superintendence, H

A direction, control and conduct of elections to Parliament and to the legislature of every State and also of elections to the offices of President and Vice-President held under the Constitution. The provisions of Article 190(3)(b) of the Constitution have, therefore, to be read along with the provisions of the 1951 Act. Section 84 of the said Act cannot be rendered otiose by holding that all vacancies on account of the aforesaid provision of the Constitution become immediately available for being filled up by way of a bye-election. The same reasoning applies in regard to Section 151A of the 1951 Act and its impact on the latter part of Section 84 thereof. As has been mentioned hereinbefore, a proceeding under Section 84 has to run its full course, particularly for the purposes of Section 8A of the said Act. The views expressed by the Division Bench of the High Court on this point cannot, therefore, be sustained.

D 35. We are, therefore, of the firm view that the introduction of Section 151A in the Act did not alter the position as far as the provisions of Section 84 and consequently 98(c) and 101(b) of the 1951 Act are concerned, since although a casual vacancy may have occurred within the meaning of Section 150 of the 1951 Act, those vacancies in which election petitions had been filed and were pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151A of the 1951 Act. Article 190(3)(b) of the Constitution merely indicates that if a Member of a House of a Legislature of State resigns his seat by writing to the Speaker and such resignation is accepted, his seat shall become vacant. It does not introduce any element of compulsion on the Election Commission to hold a bye-election ignoring the provisions of Section 84 of the Act. In such cases, we have little hesitation in holding that such casual vacancies are not available for being filled up and the Commission will have to wait for holding elections in such Constituencies until a decision is rendered in regard to the latter part of Section 84 of the 1951 Act during the life of the House. The view expressed by the High Court that a case has to be decided in

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accordance with the laws as existing on the date of adjudication, while salutary in principle, are not attracted to the facts of this case in view of the provisions of Section 84 of the 1951 Act. A

36. The Appeal is, therefore, allowed and the judgment and order of the High Court is, accordingly, set aside and the writ petition filed by the Respondent No.1 herein for a direction to hold bye-elections for the 28-Vemulawada Assembly Constituency and 29-Sircilla Assembly Constituency is dismissed. Having regard to the facts involved, the parties will bear their own costs. B C

N.J.

Appeal allowed.