

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.1972 of 2024

1. Virendra Mandal S/o Hem Lal Mandal, R/o 28 Vishanapur, Bishanpur, PO Chapuwadih, PS Bengabad, District Giridih, Jharkhand (815312)
2. Anirudh Mandal S/o Harihar Mandal, resident of At + PO Kathon, PS Poraiyahat, District Godda, Jharkhand (814153).

... **Petitioners**

-versus-

1. Election Commission of India through its Secretary, having its registered Office at Nirvachan Sadan, Ashoka Road, PO New Delhi (GPO), PS Connaught Place, District New Delhi Pincode 110001.
2. Chief Electoral Officer Jharkhand having its office Near Gaytri Mandir, HEC Colony, PO Sector 2, PS Jagannathpur, District Ranchi, Jharkhand 834002.

... **Respondents**

CORAM : SRI ANANDA SEN, J.

For the Petitioner : Mr. Amit Kumar Das, Advocate
Mr. Shivam Utkarsh Sahay, Advocate
Mr. Preetam Mandal, Advocate
Mr. Sankalp Goswami, Advocate

For the Respondents : Ms. Riya Narain, Advocate
AC to Ms. Richa Sanchita, Advocate

2/ 25.04.2024 By filing this writ petition, petitioners have prayed to quash and set aside the notification No. ECI/PN/24/2024 dated 16.03.2024 issued by the respondent No.1, i.e., Election Commission of India, whereby they have declared to conduct bye-election for the Assembly Constituency No.31, Gandey, Jharkhand. Further prayer has been made to stay implementation of notification No. ECI/PN/24/2024 dated 16.03.2024 issued by the respondent No.1.

2. Mr. Amit Kumar Das, learned counsel for the petitioners submits that since the remainder of the term of the Member in relation to the vacant Gandey Constituency is less than one year, in terms of provisions of Section 151A of the Representation of Peoples Act, 1951, no bye-election could have been declared by the Election Commission of India by the impugned notification. He submits that similar issue has been decided by a Single Bench of the Bombay High Court, Nagpur Bench in Writ Petition No.1986 of 2024, which had quashed the bye-election of Constituency No.30 Akola West, Maharashtra. He submits that since the facts of the case is same, similar order

be passed and in the meantime, notification No. ECI/PN/24/2024 dated 16.03.2024, so far as holding of bye-election in Gandey Constituency is concerned, be stayed. He further submits that in similar circumstances, against the final order, where the Election Commission of India was directed by the Bombay High Court to hold election, Election Commission of India had challenged the same, taking plea of Section 151A of the Representation of Peoples Act before the Hon'ble Supreme Court and the Hon'ble Supreme Court has stayed the order passed by the Bombay High Court in Special Leave to Appeal (C) No. 200 of 2024. The said Special Leave to Appeal (C) No.200 of 2024 is still pending before the Hon'ble Supreme Court for final decision. He contends that the Election Commission of India is taking divergent views in two similar situations, which should not be allowed.

3. Learned counsel appearing on behalf of the Election Commission of India refers to a judgment passed by a Division Bench of the High Court of Punjab & Haryana at Chandigarh in CWP No.7407 of 2024, wherein a direction has been given to the Election Commission of India to conduct bye-election even when the remainder term of the member is less than one year.

In reply, Mr. Amit Kumar Das submits that the order passed by the Punjab & Haryana High Court at Chandigarh is not applicable in this case as the same was in respect of a sitting Minister where there is mandate of Article 164(4) of the Constitution of India.

4. Heard the learned counsel for the parties.

5. The facts are undisputed in this case. So far as the State of Jharkhand is concerned, the term of Assembly will expire on 5th January, 2025. The Gandey Assembly seat fell vacant on 31st December, 2023 upon resignation by the sitting member. Vide Notification dated 16.03.2024, Election Commission of India has notified bye-election for the aforesaid constituency. The bye-election is being held by virtue of Section 151A of the Representation of the Peoples Act, 1951. It is necessary to quote Section 151A of the Representation of the Peoples Act, 1951, which reads as under: -

151A. Time limit for filling vacancies referred to in 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 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 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.

6. The proviso (a) to Section 151A of the Representation of the Peoples Act provides that if the remainder term of a member in relation to a vacancy is less than one year, Section 151A of the Representation of the Peoples Act shall not apply.

7. In this context a provision of the Constitution also needs to be considered, which relates to Ministers. Article 164(4) of the Constitution of India provides that a Minister, who for any period of six consecutive months is not a member of the Legislature of the State, shall be on expiration of the said period, ceases to be a Minister. It is necessary to quote Article 164(4) of the Constitution of India, which reads as under: -

164. Other provisions as to Ministers. – (1) ...

(2) ...

(3) ...

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

8. By virtue of the aforesaid provision of Article 164(4) of the Constitution of India, within six months a Minister, if he is not a Member of the Assembly, shall get himself elected through a bye-election. This bye-election undisputedly, will be held in terms of Section 151A of the Representation of the Peoples Act, 1951.

9. Without becoming a Member of the Legislative Assembly, on expiry of six months' period, no person can remain a Minister. This means that a person, must first become a Member of the Legislative Assembly. As per the provisions, an election is of a Member of the Legislative Assembly and not of a Minister. A Minister is not elected separately. First he becomes a Member of the Legislative Assembly consequent upon his election, then he becomes a Minister appointed by the Governor and holds the Office during the pleasure of the Governor. Thus, basically, a person has to first become a Member of the Legislative Assembly, as without becoming a Member of the Legislative Assembly within six months, he cannot remain as a Minister. This condition in the Constitution clearly provides that an election has to be held within six months even if the remaining tenure of the vacant seat is less than one year. Becoming a Member of the Legislative Assembly within this intervening period would, definitely, be in terms of Section 151A of the Representation of the Peoples Act, 1951. Further Section 151A of the Representation of the Peoples

Act, 1951 does not distinguish between a Minister or a Member of the House.

10. When Constitution provides that a Minister, who is not a Member of the Legislative Assembly, has to be elected within six months. This means that he has to mandatorily become a Member of the Legislative Assembly within six months. Thus, if a person has to become a Member of the Legislative Assembly for a remainder term which is of less than a year to become/reman a Minister, an election for that purpose can be held in terms of Section 151A of the Representation of the Peoples Act despite the proviso, I am of the opinion that there is no bar in holding a bye-election for the Member of a Legislative Assembly. The proviso (a) to Section 151A of the Representation of the Peoples Act will not come in the way of the Election Commission to issue a notification for conducting such bye-election.

11. Learned counsel submits that a similar matter is pending before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.200 of 2024.

12. In this context, I may refer to the judgment of the Hon'ble Supreme Court in the case of ***Union Territory of Ladakh & Others Versus Jammu & Kashmir National Conference & Another*** reported in ***(2023) 3 SCC OnLine SC 1140***, wherein the Hon'ble Supreme Court has held that even if a matter is pending before the Hon'ble Supreme Court or even if a matter is referred to the Larger Bench and has not been decided, the High Court should decide the case on merits and should not keep the matter pending awaiting final decisions of the reference or the order of the Supreme Court. It is necessary to quote paragraph 35 of the aforesaid judgment, which reads as under: -

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced

with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

13. Considering the aforesaid mandate of the Hon'ble Supreme Court, I have heard and decided this writ petition.

14. In my opinion in view of the mandate of Article 164(4) of the Constitution of India, the proviso to Section 151A of the Representation of the Peoples Act is merely directory in nature.

15. Considering what has been held in the foregoing paragraphs, I find no illegality in the notification wherein the Election Commission of India decided to notify the bye-election of Assembly Constituency No.31, Gandey, Jharkhand.

16. In the result, the instant writ petition is dismissed. Pending interlocutory applications, if any stand disposed of.

17. Let a copy of this order be handed over to each of the counsel for the parties.

(Ananda Sen, J.)