PETITIONER:
D.SANJEEVAYYA

Vs.

RESPONDENT:
ELECTION TRIBUNAL ANDHRA PRADESH & ORS.

DATE OF JUDGMENT:
27/01/1967

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
WANCHOO, K.N.

CITATION:
1967 AIR 1211 1967 SCR (2) 489
CITATOR INFO :
RF 1988 SC1737 (48)

ACT:
Representation of the People Act (43 of 1951), s. 150-Election petition with a prayer for a declaration that the petitioner was duly elected--Resignation by returned candidate-If Election Commission bound to hold bye-election forthwith.

HEADNOTE:
The second respondent filed an election petition for the declarations (1) that the election of the appellant to the State Legislative Assembly was void, and (2) that he himself was duly elected. While the petition was pending, the appellant was appointed as a Minister in the Central Cabinet and was elected as a member of the Rajya Sabha. He, thereupon resigned his seat in the State Legislative Assembly and filed a writ petition in the High Court for the issue of a writ of mandamus to the Election Commission of India on the ground that it was incumbent upon the Election Commission under s. 150 of the Representation of the People Act, 1951, to take steps forthwith to hold a bye-electicon for filling up the vacancy so caused. The petition was dismissed.
In appeal to this Court,
HELD : No case was made out by the appellant for the issue of a writ of mandamus to the Election Commission as the Election Commission is not bound under s. 150 to take steps to hold a bye-election immediately after a vacancy arises. When the second respondent's election petition was referred to the Tribunal it had to decide whether he should be declared to have been duly elected and, the appellant could not get rid of the petition by resigning his seat for whatever reason. In a case of this description it is open to the Election Commission to await the result of the election petition, for, if the second respondent eventually got a declaration that he himself had been duly elected, there would be two candidates representing the same constituency at the same time, one declared by the Tribunal to be duly elected at the General Election and the other declared to have been duly elected at the bye-election. Further, it is also conceivable that there may be situations in which the

Election Commission may not hold a bye-election at all or may hold it after a delay of 2 or 3 months after the vacancy arises. [493 B, F-H; 494 A-B, E; 495 F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1 of 1967.

Appeal by special leave from the judgment and order dated September 19, 1966 of the Andhra Pradesh High Court in Writ Petition No. 1253 of 1965.

B.Sen, T. Lakshmaiah, M. M. Kshatriya, K. Venkatramaiah, and G. S. Chatterjee, for the appellant.

M.K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for respondent No. 2.

R. H. Dhebar and S. S. Javali, for respondent No. 3.

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The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, from the judgment of the High Court of Andhra Pradesh dated September 19, 1966 in Writ Petition No. 1253 of 1965.

At the last General Election to the Andhra Pradesh Legislative Assembly held in February1962, the appellant and the 2nd respondent P. RajaratnaRao-were the, contesting candidates for election from the Kodumuru constituency in Kurnool District. The result of -the election was announced on February 25, 1962 and the appellant was declared to have been elected by a majority of about 7,000 votes. The second respondent thereafter filed an election petition (Election Petition No. 180 of 1962) under s. 81 of the Representation of the People Act, 1951 (Act 43 of 1951), hereinafter called the 'Act' calling in question the election of the appellant on the ground that various corrupt practices had been committed at the election and claiming a two-fold relief namely, that the election of the appellant should be declared to be void and that respondent No. 2 himself should be declared to have been duly elected. After the appellant had filed a written statement, the Election Tribunal, Hyderabad framed twenty-two issues, but the trial of the election petition could not be proceeded with as the appellant filed several interlocutory applications raising various objections and after they were overruled by the Election Tribunal, the appellant filed several writ petitions in the Andhra Pradesh High Court. During the pendency of the election petition the appellant was appointed by the President of India as Minister for Labour & Employment in the Central Cabinet. Subsequent to that appointment the appellant was elected as a Member of the Rajya Sabha on March 26, 1964. Thereupon the appellant resigned his seat in the Legislative Assembly on April 8, 1964 and intimated the same to the Speaker of the Assembly. On September 2, 1965 the appellant filed the present Writ Petition (Writ Petition No. 1253 of 1965) before the Andhra Pradesh High Court praying for a writ in the nature of mandamus commanding the Election Commission of India to act under s. 150 of the Act and call upon the Kodumuru constituency to elect a person for the purpose of filling up the vacancy caused by the resignation of the appellant. The appellant also prayed for a writ 'directing the Election Commission to withdraw election petition No. 180 of 1962 from the file of the Election Tribunal, Hyderabad and to stay all further proceedings in the trial of that election petition pending the disposal of the writ petition'. In the course of argument before the High Court the appellant did not press the second prayer for 'directing the Election

Commission to withdraw the election petition from the file of the Election Tribunal, Hyderabad'. With regard to the first prayer, the High Court held that no case

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was made out for the issue of a writ of mandamus to the Election Commission and accordingly dismissed the writ petition.

On behalf of the appellant the argument was put forward that as soon as the appellant resigned his seat in the Legislative Assembly under Art. 190(3)(b) of the Constitution of India there was a duty cast on the Election-Commission to take steps to hold a bye-election for filling the vacancy so caused under s. 150 of the Act. It was contended that it was incumbent upon the Election Commission to discharge this duty immediately without waiting for the result of the election petition filed by respondent No. 2 on April 11, 1962.

Article 190(3) of the Constitution states

"190(3) If a member of a House of the Legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article, 191; or

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

his seat shall thereupon become vacant."

Article 324 (1) of the Constitution provides

"The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision, of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

Section 150(i) of the Act states as follows :

" 150. (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

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orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy."

Sections 84 of the Act provides

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."

Section 98 reads as follows

"At the conclusion of the trial of an election petition the Tribunal shall make an order-
(a) dismissing the election petition; or
(b) declaring the election of all or any of the returned candidates to be void; or
(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected;"

It was argued for the appellant that s. 150 of the Act contemplates three contingencies on the happening of any one of which the Election Commission may call for a bye-election. The first contingency namely, the seat of a member becoming vacant arises, when a member resigns his seat ; the second contingency namely, the seat of a member being declared vacant, is brought about when a member absents himself from meetings of the House of the Legislature for a period of sixty days without the permission of the House; while the third contingency arises when the election of a member to the Legislative Assembly is declared void by an Election Tribunal under s. 98 (b) of the Act at the conclusion of the trial of an election petition. It was argued for the appellant that the, three contingencies contemplated by the section are mutually exclusive and upon the happening of any one of them an obligation is cast upon the Election Commission to take steps to hold a bye-election forthwith. In the present case, it was pointed out that the first contingency has arisen namely, the seat of a member became vacant upon 'his resignation and it was manifestly the duty of the Election Commission to take steps forthwith to hold a bye-election to fill the vacancy irrespective of the fact that an election petition was pending in which the second respondent had asked for a declaration that the election of the appellant was void and also for the relief that he himself should be declared to be duly elected.

We are unable to accept the argument of the appellant as correct. In our opinion, the provisions of s. 150 of the Act must be interpreted in the context of ss. 84 and 98(c) and other relevant

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provisions of 'Part III of the same Act. If the interpretation contended for by the appellant is accepted as correct the vacancy must be filled by a bye-election as soon as a member resigns his seat notwithstanding the pendency -of an election petition challenging his election. If the candidate who filed the election petition eventually gets a declaration that the election of the member is void and that he himself had been duly elected there will be two candidates representing the same constituency at the same time, one of them declared to be duly elected at the General Election and the other declared to have been elected at the bye-election and an impossible situation would arise. It cannot be supposed that Parliament contemplated such a situation while enacting s. 150 of the Act. Parliament could not have intended that the provisions of Part VI of the Act pertaining to election petitions, should stand abrogated as soon as a member resigns his seat in the Legislature. It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those Of another unless it is impossible to effect reconciliation between them. The principle stated in Crawford's Statutory Construction at page 260 is as follows

"Hence the court should, when-it seeks the

> legislative intent, construe all of the constituents parts of the statute together, and seek to ascertain the legislative intention from the whole act, considering every provision thereof in the light of the general purpose and object of the act itself, and endeavouring to make every part effective, harmonious, and sensible. This means, of course, that the court should attempt to avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous,' unless such a result is clearly unavoidable."

It is therefore not permissible, in the present case, to interpret s. 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. When an election petition has been referred to a Tribunal by the Election Commission and the former is seized of the matter, the petition has, to be disposed of according to law. The Tribunal has to adjudge at the conclusion of the proceeding whether the returned candid,,' has or has not committed any corrupt practice at the election and secondly, it has to decide whether the second respondent should or should not be declared to have been duly elected. A returned candidate cannot get rid of an election petition filed against him by resigning his seat in the Legislature, whatever the reason for his resignation may be. In the present case, the election petition filed by respondent No. 2 'has prayed for a composite relief namely, that the election of the

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appellant should be declared to be void and that respondent No. 2 should be declared to be duly elected. In a case of this description the Election Commission is not bound immediately to call upon the Assembly constituency to elect a person for the purpose of filling the vacancy caused by the resignation of the appellant. It is open to the Election Commission to await the result of the election petition and thereafter decide whether a bye-election should be held or not. If the election petition is ultimately dismissed or if the election is set aside but no further relief is given, a bye-election would follow. If,. however, respondent No. 2 who filed the election petition or any other candidate is declared elected the provisions of s. 1.50 of the Act cannot operate at all because there is no vacancy to be filled. In the present case, therefore, we hold that the Election Commission is not bound under S. 150 of the Act to hold a bye-election forthwith but may suspend taking action under that section till the result of the election petition filed by respondent No. 2 is known.

This view is also supported by the circumstance that no time limit is fixed in the section for the Election Commission to call upon the Assembly constituency concerned to elect a person for filling the vacancy. Nor does the section say that the Election Commission shall hold a bye-election "forthwith" or "immediately". It is also conceivable that there may be a situation in which the Election Commission may not hold a bye-election at all or may hold the bye-election after a delay of 2 or 3 months. Take for instance, a case where a member resigns his seat in the Legislative Assembly of a State 3 months before a General Election is due to be held. It cannot be suggested that the Election Commission is bound under s. 150(1) of the Act to hold a bye-election forthwith in that vacancy. Take

also another instance where a member of an Assembly of Himachal Pradesh resigns his seat during winter. It cannot be argued that the Election Commission is bound to issue a notification for a bye-election forthwith though the climatic conditions are unsuitable for holding such a bye-election.

The view that we have expressed as to the scope and effect of s. 150 of the Act is borne out by the following passage from May's Parliamentary Practice, 17th Edn., pp. 176-177 :

> "Where a vacancy has occurred prior to, or immediately after, the first meeting of a new Parliament, the writ will not be issued until the time for presenting election petitions has expired. Nor will a writ be issued, if the seat which has been vacated be claimed on behalf of another candidate.
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> In December, 1852, several Members, against whose return election petitions were pending, accepted office under
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> the Crown. After much consideration, it was agreed that where a void election only was alleged, a new writ should be issued (Southampton and Carlow writs, 29 Dec. 1852); and again, in 1859 and in 1880, the same rule was adopted.
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> Where the seat is claimed, it has been ruled that the writ should be withheld until after the trial of that claim (Athlone Election, 1859), or until the petition has been withdrawn [Louth Election (Mr. Chichester Fortescue), 1866].
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> In 1859, Viscount Bury accepted office under the Crown, while a petition against his return for Norwich, on the ground of bribery, was pending; and, as his seat was not claimed, a new writ was issued. Being again returned, a petition was presented against his second election, claiming the seat for another candidate. The petition against the first election came on for trial, and the committee reported that the sitting Members, Lord Bury and Mr. Schneider, had been guilty, by their agents, of bribery at that election. By virtue of that report, Lord Bury, under the Corrupt Practices Prevention Act, became incapable of sitting or voting in Parliament, or, in other words, ceased to be a Member of the House; but as a petition against his second return, claiming the seat, was then pending, a new writ was not issued [Parl. Deb. (1859) 155, c. 865]."

For these- reasons we hold that the High Court was right in holding that no case was made out for the issue of a writ of mandamus to the Election Commission and this appeal must be accordingly dismissed with costs:-

Appeal dismissed.

V.P.S.

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