

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION NO: 865 OF 2024

Between:

Sri Patlola Karthik Reddy,

...PETITIONER

AND

1. Election Commission of India, Through Secretary Nirvachan Sadan, Ashoka Road, New Delhi -110001.
2. Telangana State Election Commission, Through Secretary 1st Floor, DTCP Building, Opp PTI Building AC Guards, Hyderabad Telangana - 500004.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ, Order or direction particularly one in the nature of WRIT OF MANDAMUS or any other appropriate writ declaring that the Letter dt. 04.01.2024 issued by the Respondent No.1 Election Commission of India bearing No. 100/ECI/LET/FUNC/TL-LC-MLA/09-10/BIEN/2023 for conducting the bye-elections of two seats in Telangana State Legislative Council and to quash and set aside the Letter dt. 04.01.2024 bearing No. 100/ECI/LET/FUNC/TL-LC-MLA/09-10/BIEN/2023 issued by the Respondent No.1 Election Commission of India same.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings Letter dt. 04.01.2024 bearing No. 100/ECI/LET/FUNC/TL-LC-MLA/09-10/BIEN/2023 issued by the Respondent No.1 in the bye elections of

the two seats in Telangana State Legislative Council including issuance of notification and submission of nomination.

Counsel for the Petitioner: SRI MUKUL ROHATGI, SR COUNSEL ASSISTED BY Ms. MALAK BHATT, Ms. SAMRIDHI, MS ANANYA KANORIA AND M/s NEEHA NAGPAL FOR SRI BHAKTI B TURAKHIA

Counsel for the Respondent No.1: SRI AVINASH DESAI, SR COUNSEL FOR SRI MOHAMMED OMER FAROOQ, SC FOR ECI

Counsel for the Respondent No.2: SRI P.SUDHEER RAO, SC FOR TSEC

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.865 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Mukul Rohatgi, learned Senior Counsel assisted by Ms. Malak Bhatt, Ms. Samridhi, Ms. Ananya Kanoria and Ms. Neeha Nagpal, learned counsel, appears for Mr. Bhakti B.Turakhia, learned counsel for the petitioner.

Mr. Avinash Desai, learned Senior Counsel appears for Mr. Mohammed Omer Farooq, learned counsel for respondent No.1- Election Commission of India.

2. In this writ petition, the petitioner has assailed the validity of a press note dated 04.01.2024, issued by the Election Commission of India for conducting bye-elections to two seats in the Telangana State Legislative Council.

3. Facts, as can be culled out from the averments made in the writ petition, are that the petitioner is a National Spokesperson of Bharat Rashtra Samithi (BRS). On

09.12.2023, Sri Kadiyam Srihari and Sri Padi Kowshik Reddy resigned from their respective seats in Telangana Legislative Council. Thereupon, two casual vacancies occurred in the Telangana Legislative Council. A press note has been issued on 04.01.2024 by the Election Commission of India notifying the schedule for holding separate bye-elections to the Legislative Council of Telangana by the members of Legislative Assembly.

3.1. From perusal of the aforesaid press note dated 04.01.2024, it is evident that separate public notice under Rule 3 of the Conduct of Election Rules, 1961, is being issued which contemplates that separate nomination papers are required to be filed by the candidates and separate set of coloured ballot papers, white and pink, have to be used. In the aforesaid factual background, the validity of the press note dated 04.01.2024 has been assailed.

4. Learned Senior Counsel for the petitioner submitted that Sri Kadiyam Srihari and Sri Padi Kowshik Reddy were elected by members of Legislative Assembly under the Assembly Constituency as per the procedure laid down under

Article 171(3)(d) of the Constitution of India. While inviting the attention of this Court to Article 171(4) of the Constitution of India, it is contended that the said vacancies, which have arisen, are required to be filled up by a single transferable vote. It is, therefore, contended that the aforesaid press note dated 04.01.2024 has been issued in violation of Article 171(4) of the Constitution of India as well as Rule 70 of the Conduct of Election Rules, 1961. It is also pointed out that the notification for conducting bye-elections has not been issued by the Election Commission of India. Therefore, the bar contained in Article 329(b) of the Constitution of India does not apply.

4.1. Learned Senior Counsel for the petitioner has urged that the judicial intervention is permissible to correct or smoothen the election proceeding and to remove the obstacle therein. In support of the aforesaid submission, reliance has been placed on a decision of the Supreme Court in **Election Commission of India v. Ashok Kumar**¹.

¹ (2000) 8 SCC 216

5. On the other hand, learned Senior Counsel for Election Commission of India, who has entered appearance on advance notice, has submitted that Article 171 of the Constitution of India envisages filling up the vacancies, which arise at the end of the term of office of a member, whereas Section 151 of the Representation of the People Act, 1950 (hereinafter referred to as, "the RP Act"), deals with filling up of the casual vacancies. It is submitted that the action, which has been initiated by the Election Commission of India, is in consonance with Section 151 of the RP Act. It is also pointed out that a notification has been issued by the Election Commission of India today.

5.1. Learned Senior Counsel for Election Commission of India has placed a copy of the notification on record and has stated that the elections are scheduled to be held on 29.01.2024. It is urged that the bar contained in Article 329(b) of the Constitution of India applies and therefore, the instant writ petition cannot be entertained. It is contended that a similar challenge was made in respect of elections held to fill up the seats from Rajyasabha and the Supreme

Court, by an order dated 25.06.2019 passed in W.P.(C) No.774 of 2019 (**Paresh Dhanani v. Election Commission of India**), *inter alia* held that the bar under Article 329(b) of the Constitution of India applies and therefore, declined to entertain the writ petition.

5.2. Learned Senior Counsel for the Election Commission of India further submitted that the ground of infraction of Article 171(4) of the Constitution of India can be raised in an election petition and the Constitution does not contemplate two challenges in respect of same election. In support of his submission, learned Senior Counsel has placed reliance on a decision of a learned Single Judge of Gujarat High Court in **Subhramanayam Jaishankar Krishnaswamy v. Pareshkumar Dhirajlal Dhanani**².

6. We have considered the rival submissions made on both sides.

7. Before proceeding further, it is apposite to take note of the relevant extract of Article 171 of the Constitution of India as well as Section 151 of the RP Act.

² (2020) 3 GLR 2038

Article 171 of the Constitution of India:

171. Composition of the Legislative Councils.-

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school,

as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

...

Section 151 of the RP Act:

151. Casual vacancies in the State Legislative Councils. - When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Election Commission shall, by a notification in the Official Gazette, call upon the Council constituency concerned or the members of the Legislative Assembly of the State, as the case may be, 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.

8. Thus, from perusal of the provisions of Articles 171 of the Constitution of India and Section 151 of the RP Act, it is evident that Section 151 of the RP Act deals with a specific provision of filling up of the casual vacancies in the State Legislative Councils. Section 151 of the RP Act, *inter alia*, provides that when before the expiration of the term of office of a member elected to the Legislative Council of a State becomes vacant or is declared vacant or his election to Legislative Council has been declared void, the Election Commission shall by notification in the official gazette elect a person for the purpose of filling the vacancy so caused. Section 151 of the RP Act envisages issuance of a separate notification for filling up the vacancies. The press note dated 04.01.2024 is in consonance with Section 151 of the RP Act. Therefore, the contention that the press note is in violation of Article 171(4) of the Constitution of India does not deserve acceptance.

9. It is pertinent to note that the press note was issued by the Election Commission of India on 15.06.2019 for filling up six casual vacancies in the Council of the States of Bihar, Gujarat and Orissa. In the aforesaid press note it was clarified that the bye-elections would be treated as separate elections and poll will be taken accordingly. The press note was challenged in a writ petition before the Supreme Court. The Supreme Court by an order dated 25.06.2019 passed in W.P (C).No.774 of 2019 (**Paresh Dhanani** (supra)), after taking note of the decision of the Supreme Court in the **Ashok Kumar** (supra), held that bar contained in Article 329(b) of the Constitution of India applies. It was held as under:

Learned Senior Advocate appearing for the petitioner has drawn our attention to para 32 in the Election Commission of India vs. Ashok Kumar & Ors., (2000) 8 SCC 216, in particular sub-paragraphs 2 and 4 thereof. We do not, however, agree with the contention of the learned counsel that the present case does not and will not amount to 'calling in question the election' and would not result in interpreting, obstructing or delaying the progress of election to the Rajya Sabha. The contention and challenge raised before us is not to a mere correction or to smoothen the progress of election proceedings by removing obstacles or to preserve vital piece of evidence if the same would be

destroyed or rendered irretrievable by the time set for invoking jurisdiction of the statutory court. These are limited exceptions and not an alternative ground to the statutory right to challenge and question the election by filing a writ petition. The contentions raised challenging the notification/order dated 15th June, 2019 can and should be as per the Constitution and Statute raised by way of an election petition.

Recording the aforesaid, we decline and do not entertain this writ petition leaving it open to the petitioner to file an election petition, if so advised. We, accordingly, express no opinion on all other contentions and merits raised by both the sides.

10. In the instant case also the notification has already been issued by which the bye-elections have been notified which are scheduled to be held on 29.01.2024. Therefore, in the fact situation of the case, the bar under Article 329(b) of the Constitution of India applies. For this reason also no interference is called for.

11. In view of the preceding analysis, no interference in the matter is called for at this stage.

12. In the result, the writ petition is dismissed.

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Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

**SD/-R.KARTHIKEYAN
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To

1. One CC to SRI BHAKTI B TURAKHIA, Advocate [OPUC]
2. One CC to SRI MOHAMMED OMER FAROOQ, SC FOR ECI [OPUC]
3. One CC to SRI P.SUDHEER RAO, SC FOR TSEC [OPUC]
4. Two CD Copies

PSK.

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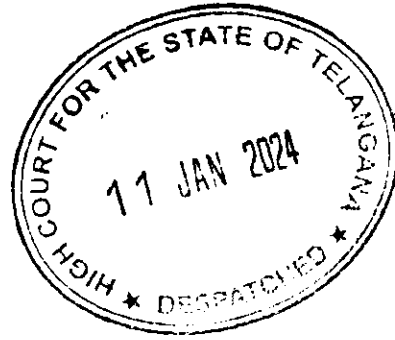
CC TODAY

HIGH COURT

DATED:11/01/2024

ORDER

WP.No.865 of 2024



DISMISSING THE WRIT PETITION
WITHOUT COSTS.

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KMA
11/1/2024