

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No. 11739 of 2011

ANIL DATTATRAY PARAB

Petitioner(s)

VERSUS

ELECTION COMMISSIONER & ORS.

Respondent(s)

O R D E R

We have heard Mr. Tapesh Kumar Singh, learned counsel for the petitioner, Mr. Ashok H. Desai, learned senior counsel for respondent No. 1-Election Commissioner, Mr. Goolam E. Vahanvati, learned Attorney General, for respondent No. 27-Mr. Prithviraj Chavan, and Mr. Ravi Kadam, learned Advocate General, for respondent No. 4-Sanjay Satishchandra Dutt.

2. The election for 10 seats to the Maharashtra Legislative Council by the members of Maharashtra Legislative Assembly took place on June 10, 2010 and the following candidates were declared elected :-

1. Chaudhari, Dipti Ashok
2. Dutt, Sanjay Satishchandra
3. Dalwai, Hussain Umar
4. Naik-Nimbalkar, Ramraje Pratapsinh
5. Fadnavis, Schobhatai Madhavrao
6. Binsale, Prakash Shankar
7. Munde, Dhananjay Panditrao
8. Mete, Vinayak Tukaram
9. Raote, Diwakar Narayan
10. Sawant, Vijay Krishnaji

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3. The present petitioner filed an election petition (Election Petition No. 1 of 2010) before the Bombay High Court seeking the following reliefs :

- (a) That this Hon'ble Court be pleased to declare that the Election of all the returned candidates viz., Respondent Nos. 3 to 12 to the Legislative Council in the elections held on 10/6/2010 is ex facie illegal null and void and liable to be set aside.

(b) That this Hon'ble Court further be please to quash and set aside election of returned candidates viz., Respondent Nos. 3 to 12 to the Legislative Council held on 10/6/2010.

(c) That this Hon'ble Court further be pleased to declare that elections held to the Legislative Council held on 10/6/2010 are in violation of the provisions of the Representation of People Act, rules made there under, the Conduct of Election Rules, and is hit by corrupt practices.

(d) That this Hon'ble Court be pleased to declare that Respondent Nos. 13 to 16 had no right to vote during the subsistence of their suspension of their membership and the votes cast by them be declared illegal and invalid.

(e) That this Hon'ble Court be pleased to order for recount in accordance with law and if Petitioner is found elected then further be pleased to declare that the Petitioner is duly elected.

(f) Pending the hearing and final disposal of this Petition the Respondents Nos. 3 to 12 be restrained by an order and injunction of this Hon'ble Court from participating in the business of the Legislative Council or to transact any business in the Legislative Council or to exercise any right and powers incidental to the membership of the Legislative Council.

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4. Respondent No. 4-Sanjay Satishchandra Dutt, one of the returned candidates, resigned and consequent upon his resignation, a notification was issued by the Maharashtra Legislature Secretariat on March 11, 2011 about his resignation; acceptance of his resignation by the Chairman of the Council and that the seat has become vacant with effect from that date, i.e., March 11, 2011.

5. On April 11, 2011, the respondent No. 1-Election Commission of India - preferred an application before the High Court in the above election petition seeking permission to hold election for the purpose of filling the vacancy caused due to resignation of respondent No. 4.

6. The above application was contested by the election petitioner (present petitioner). After hearing the parties, the High Court, by its order dated April 13, 2011, allowed the application made by the Election Commission of India in

terms of prayer (A). Accordingly, Election Commission of India was permitted to declare the election to the Maharashtra Legislative Council by the members of the Maharashtra Legislative Assembly for the seat having fallen vacant in view of the resignation of Sanjay Satishchandra Dutt (respondent No. 4 herein).

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7. Mr. Tapes Kumar Singh, learned counsel for the petitioner, heavily relied upon decision of this Court in Election Commission of India Vs. Telangana Rastra Samithi and Another (2011) 1 SCC 370, and submitted that pending the election petition filed by the present petitioner, the seat could not be treated vacant and no election for such seat could be held. He would submit that by allowing the application made by the Election Commission of India, petitioner's election petition has been rendered infructuous affecting petitioner's valuable legal right.

8. In Telangana Rastra Samithi case (supra), the question that fell for consideration before this Court was 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 151-A of the Representation of People Act, 1951 (for short 'the 1951 Act'). This Court considered earlier decision of this Court in D. Sanjeevayya Vs. Election Tribunal, (1967) 2 SCR 489, and agreed with the view taken in that case. This is what this Court said :-

"41. It is significant that in Section 151-A neither Section 84 nor Sections 98(c) and 101(b) have been mentioned. Instead, what is referred to are the casual vacancies referred to in Sections 147 and 149 to 151 in the State Legislative

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Assembly and the State Legislative Council. What had not been indicated in the said provisions was provided in Section 151-A with the two exceptions carved out in the proviso. Section 151-A 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 151-A, which was not available when the decision in D. Sanjeevayya case was rendered, altered the whole legal scenario and rendered the decision in D. Sanjeevayya case to be no longer good law as declared by this Court. Although, an attempt has been made to differentiate between the facts of D. Sanjeevayya case and this case, we are unable to accept the interpretation of Section 151-A in support of such contention. Any other interpretation of Section 151-A would render the provisions of Sections 84, 98(c), 101(b) and 8-A 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 proviso to Section 151-A.

42. 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 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 8-A 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 8-A of the said Act. Simply by

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submitting his resignation a successful candidate against whom allegations of corrupt practices are made, cannot escape the consequences of Section 8-A of the Act, if the same are ultimately found to be proved."

9. Then in paragraphs 45 and 46 of Telangana Rastra Samithi case (supra), this Court held as under :

"45. 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, 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 151-A 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 8-A of the said Act. The views expressed by the Division Bench of the High Court on this point cannot, therefore, be sustained.

46. We are, therefore, of the firm view that the introduction of Section 151-A in the Constitution did not alter the position as far as the provisions of Section 84 and consequently Sections 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

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pending cannot be held to have become available for the purposes of being filled up within the time prescribed under Section 151-A of the 1951 Act. Article 190(3)(b) of the Constitution merely indicates that if a Member of a House of a Legislature of a State resigns his seat by writing to the Speaker and such resignation is accept, 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 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."

10. It is important to bear in mind that the question in Telangana Rastra Samithi case (supra) arose from a writ petition concerning bye-election to casual vacancies in the State Legislative Assembly. The High Court held that the

provisions of Section 151-A of the 1951 Act were mandatory and that the pendency of election petitions and the uncertain consequences would not, in any manner, dilute the effect of Section 151-A. This Court did not accept the view of the High Court and overturned the reasoning given by the High Court. There cannot be any quarrel about the

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proposition propounded in Telangana Rastra Samithi case (supra). However, in view of the peculiar facts of the present case, the above decision does not help the petitioner.

11. Three principal prayers have been made in the election petition by the petitioner; (i) election of the returned candidates, namely, respondent Nos. 3 to 12 to the Legislative Council held on June 10, 2010 be declared null and void [vide prayer clauses (a) to (c)]; (ii) that it be declared that respondent Nos. 13 to 16 had no right to vote during the subsistence of suspension of their membership and votes cast by them be declared illegal and invalid [vide prayer clause (d)], and (iii) order for recount and, if petitioner is found elected, then the High Court further be pleased to declare that the petitioner is duly elected [vide prayer clause (e)].

12. On resignation of respondent No. 4 and holding election of the casual vacancy due to his resignation, the reliefs claimed by the petitioner in prayer clauses (a) to (c) are not affected. Prayer (d) is also not affected in any manner. In so far as prayer (e) is concerned, the High Court in the impugned order in paragraph 9 noticed as follows :

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"I also find substance in the submissions advanced by the learned Advocate General and Mr. Rajagopal that it can be seen from the result sheet maintained for counting of votes that Shri Dutt got 30 votes (value 3000) at the first count. This means, at the first count itself he had secured votes more than the number sufficient to secure the election of the candidate under Rule 1, 84(1)(b), which was 2690. If the number of valid votes is to be reduced by four by discarding the votes of 4 suspended candidates, the number of votes sufficient to secure the election of a candidate gets reduced to 2582. With this reduced quota also Shri Dutt gets elected on the very first count alongwith Chaudhari Dipti Ashok and Naik-Nimbalkar Ramraje Pratpsinh. In that circumstance, even if the petitioner is to be declared elected on the basis of recounting, the election result in respect of these three persons would remain completely unaffected. In fact the surplus votes received by these three persons have been distributed amongst the other candidates for the purpose of their election. The petitioner himself desires to have benefit of the surplus. In these circumstances, even if the petitioner is to finally succeed in getting relief at prayer (e), his prospect of being declared elected to the Maharashtra Legislative Council will remain unaffected by the proposed election..."

13. There is no challenge to the facts noted by the High Court in paragraph 9 of its order. Since these facts are not disputed before us, we are of the view that the view taken by the High Court that if the petitioner is to finally succeed in getting relief at prayer (e) his prospect of being declared elected will remain unaffected by the proposed election, does not suffer from any legal infirmity warranting interference by us.

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14. We have refrained from dealing with the matter at length and in detail since the election petition is pending before the High Court and an elaborate consideration by us may affect the decision in the pending election petition.

15. All in all, we are satisfied that by granting the

application, the reliefs claimed in election petition by the petitioner are not prejudicially affected.

16. Special leave petition is, accordingly, dismissed.

.....J.
(R.M. LODHA)

NEW DELHI;J.
NOVEMBER 15, 2011 (H.L. GOKHALE)
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ITEM NO.2 COURT NO.10 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).11739/2011

(From the judgement and order dated 13/04/2011 in Election Application (Lodging) No. 6/2011 in Election Petition No. 1/2010 of The HIGH COURT OF JUDICATURE AT BOMBAY)

ANIL DATTATRAY PARAB Petitioner(s)

VERSUS

ELECTION COMMISSIONER & ORS. Respondent(s)

(With prayer for interim relief)

Date: 15/11/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s)

Mr. Tapeshe Kumar Singh, Adv.

For Respondent(s)

Mr. Ashok H. Desai, Sr. Adv.
Ms. Poli Katakai, Adv.
Ms. Meenakshi Arora, Adv.
Mr. S.K. Mandiratta, Adv.

Mr. Shivaji M. Jadhav, Adv.

Ms. Asha Gopalan Nair, Adv.

Mr. Ravi Kadam, Adv.Gen. for Maharashtra & Goa
Mr. Hitest Jain, Adv
Mr. Subhash Jadhav, Adv.
Mr. Amaa Usman, Adv.
Mr. Vikas Mehta, Adv.

Mr. Goolam E. Vahanvati, Attorney General
Mr. Sanjay V. Kharde, Adv.
Mr. Sachin J. Patil, Adv.
Mr. Anoopam N. Prasad, Adv.
Mr. Nishanth Patil, Adv.
Ms. Naila Jung, Adv.
Mr. Anand Kannan, Adv.
Mr. Amol Nirmalkumar Suryawanshi, Adv.

Mr. M.Y. Deshmukh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Special leave petition is dismissed in terms of the
signed order.

(Rajesh Dham)
Court Master

(Renu Diwan)
Court Master

(signed order is placed on the file)