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W.P.No.27064 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,  
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.27064 of 2026

and WMP Nos 29637, 29634 and 29636 of 2026

K.Venkatachalapathy  
S/o.Karuppasamy,  
K.M.F.Complex, Bell Amazes Colony,  
Tirunelveli District Court opposite,  
Palayamkottai, Thirunelveli District.

Petitioner(s)

Vs

The Election Commission of India  
through its Secretary, Nirvachan Sadan,  
Ashoka Road, New Delhi - 110 001  
and 11 others

Respondent(s)

For Petitioner(s): Mr. V.R.Shanmuganathan  
(Thru Video Conferencing)

For Respondent(s): Mr.Niranjan Rajagopalan  
Standing Counsel for R1

Mr.AR.L.Sundaresan  
Additional Solicitor General of India  
Assisted by Dr.V.Venkatesan  
Senior Panel Counsel for R2



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Mr. Vijay Narayan, Advocate General  
Assisted by Mr.Akash  
Government Advocate for R3

Mr.G.Masilamani, Senior Counsel  
for Ms.Ramya.M.B. for R4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner, a registered voter in the State of Tamil Nadu and a practising advocate, has approached this Court under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to declare that the vacancies arising out of the resignations of various returned candidates in the May 2026 General Elections to the Tamil Nadu Legislative Assembly do not constitute "clear vacancies" or available vacancies for the purpose of holding bye-elections under Section 151-A of the Representation of the People Act, 1951 (hereinafter referred to as "the RP Act").

2. The factual substratum of the petitioner's case, as culled out from the affidavit, is that pursuant to the General Elections of May 2026, several returned candidates resigned their seats, which



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were subsequently accepted by the Speaker under Article 190(3)(b)

of the Constitution. The specific vacancies pointed out are:

(a) 141-Tiruchirappalli (East) Assembly Constituency:

Resigned by fourth respondent effective 10.5.2026,  
who chose to retain the 12-Perambur seat.

(b) 103-Perundurai Assembly Constituency: Resigned  
by S.Jayakumar effective 25.5.2026.

(c) 225-Ambasamudram Assembly Constituency:  
Resigned by seventh respondent effective 26.5.2026.

(d) 179-Viralimalai Assembly Constituency: Resigned  
by fifth respondent effective 16.6.2026.

(e) 135-Karur Assembly Constituency: Resigned by  
sixth respondent effective 29.6.2026.

3.1. The cornerstone of the argument advanced by learned counsel for the petitioner rests upon the pendency of several election petitions filed before this court under Part VI of the RP Act between 03.06.2026 and 18.06.2026, which challenge the very validity of the elections of these resigned members. It is submitted that all these petitions claim a composite relief under Section 84

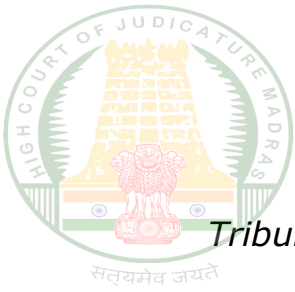


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read with Section 101(b) of the RP Act, praying not only to declare the election of the returned candidate void, but additionally seeking a further declaration that the election petitioner or another candidate has been duly elected.

3.2. It is further submitted that that if the first respondent/ Election Commission of India treats these seats as "clear vacancies" under Section 151-A of the RP Act and holds bye-elections within the mandatory six month window, an impossible situation would arise. If the election petitioner eventually succeeds in proving corrupt practices under Section 8-A of the RP Act and secures a declaration under Section 101 of the RP Act, there would be two candidates representing the same constituency simultaneously, one via the General Election and another via the bye-election. Parliament could never have intended such an anomalous and unworkable scenario.

3.3. Learned counsel for the petitioner relying upon the decision of the Supreme Court in *D.Sanjeevayya v. Election*



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*Tribunal, Andhra Pradesh*<sup>1</sup>, submitted that that a returned candidate cannot get rid of an election petition or escape the tentacles of a corrupt practice inquiry under the RP Act by submitting resignation. The Election Commission may suspend taking action under Section 150 of the RP Act until the outcome of the election petition is known.

3.4. He referred to a decision of the Supreme Court in *Election Commission of India v. Telangana Rastra Samithi*<sup>2</sup>, which confirmed that the introduction of Section 151-A of the RP Act vide the 1996 Amendment did not alter the ratio of *Sanjeevayya (supra)* and submitted that the non-obstante clause in Section 151-A of the RP Act does not extend to Sections 84, 98(c), or 101(b) of the RP Act.

3.5. He also referred to the decision in *Pramod Laxman Gudadhe v. Election Commission of India*<sup>3</sup>, which reaffirmed the categorical distinction between two spheres of vacancies: (a) vacancies where election petitions are pending [which are *not*

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1 AIR 1967 SC 1211

2(2011) 1 SCC 370)

3 (2018) 7 SCC 550

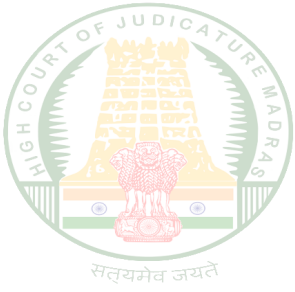


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available clear vacancies]; and (b) vacancies where no election petitions are pending.

4.1. Learned Advocate General appearing on behalf of the third respondent vehemently countered the factual premise of the writ petition by submitting that in respect of at least three of the specified cases, on the exact date on which the resignations were tendered and accepted by the Speaker, there was absolutely no election petition pending before this court.

4.2. Learned Advocate General emphasized that a vacancy arises immediately upon the acceptance of a resignation letter under Article 190(3)(b) of the Constitution of India. If no election dispute is active on that date, the statutory machinery under Section 151-A of the RP Act is immediately triggered by operation of law, creating a binding obligation upon the Election Commission to fill the unrepresented seat within six months. The subsequent filing of an election petition cannot retroactively invalidate a clear vacancy that had already arisen.

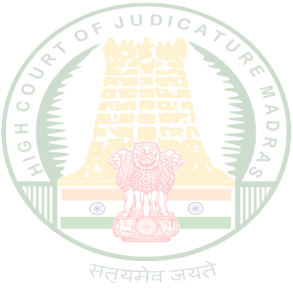


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5.1. Mr.G.Masilamani, learned Senior Counsel appearing for the fourth respondent, submitted that the present writ petition is not maintainable. He argued that the constitutional mandate under Article 324 clothes the Election Commission of India with the absolute, plenary power of superintendence, direction, and control over elections. Whether to hold a bye-election or to defer it under specific circumstances falls within the fiefdom of the Election Commission and a third-party busybody cannot seek to preemptively paralyze this process.

5.2. Learned Senior Counsel argued that the petitioner has no *locus standi* to maintain this writ petition, as the petitioner's apprehensions are entirely speculative. No notification for a bye-election has yet been issued by the ECI and, therefore, this petition is premature.

5.3. It is further submitted that the petitioner is not a registered elector or voter of any of the specific five constituencies under the scanner. Being a stranger to the local electorate, he cannot claim any interest or injury.



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6.1. Adding a vital procedural clarification, learned Standing Counsel for the Election Commission of India submitted that the petitioner's blanket assertion regarding pending election petitions is legally flawed, in as much as the election petitions are strictly subject to maintainability and curing of defects. In many of these cases, no notice has even been ordered or issued by the Court to the opposite parties.

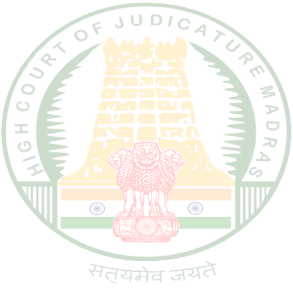
6.2. Learned counsel further submitted that until an election petition passes the muster of maintainability and notice is ordered, it cannot be deemed to be "pending" in a manner that creates a legal bar against the filling up of casual vacancies.

7. We have given our anxious consideration to the submissions advanced by learned counsel for the parties and perused the decisions of the Supreme Court.

8. At the outset, it is apposite to refer to the law governing the issue raised in this writ petition.

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9. The position of law as laid down by the Supreme Court in

*D.Sanjeevayya* (supra) is as under:

**"4. We are unable to accept the argument of the appellant as correct. In our opinion, the provisions of Section 150 of the Act must be interpreted in the context of Sections 84 and 98(c) and other relevant 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 Section 150 of the Act. Parliament could not have intended that the provisions of Part VI of the Act**



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***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. ...***

***5. It is therefore not permissible, in the present case, 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. 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 candidate 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***



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**resignation may be.** In the present case, the election petition filed by Respondent 2 has prayed for a composite relief namely, that the election of the appellant should be declared to be void and that Respondent 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 2 who filed the election petition or any other candidate is declared elected the provisions of Section 150 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 Section 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 2 is known."**

*[emphasis supplied]*



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10. In *Telangana Rastra Samithi* (supra), the Supreme Court

held thus:

**"39. The decision in Sanjeevayya case involved the causation of a casual vacancy on account of resignation by the elected candidate while an election petition under Section 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 a declaration was either made or refused under the latter part of Section 84. Notwithstanding the intervention of Section 151-A by way of amendment with effect from 1-8-1996, the position remains the same. The only effect on account of such declaration under Section 190(3)(b) is that a time-limit was fixed for holding bye-elections in respect of casual vacancies.**

...

**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**



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***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 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 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. ..."***

*[emphasis supplied]*

11. The Supreme Court in *Pramod Laxman Gudadhe* (supra)

observed thus:

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"14. Proceeding further, the Court in D.Sanjeevayya case ruled that **when an election petition has been referred to a tribunal by the Election Commission and the tribunal 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 candidate has or has not committed any corrupt practice at the election and secondly, it has to decide whether the second respondent therein 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 from the seat in the legislature, whatever the reason for his resignation may be.**

...

16. The Court in Election Commission of India case went on to say that the introduction of Section 151-A did not alter the position as far as the provisions of Section 84 and, consequently, Sections 98(c) and 101(b) of the Act are concerned, although a casual vacancy may have occurred within the meaning of Section 150 of the Act. **The Court made a distinction between the two categories of vacancies, namely, vacancies in which election petitions had been filed and are pending and other vacancies where no such cases were filed and pending. The Court**



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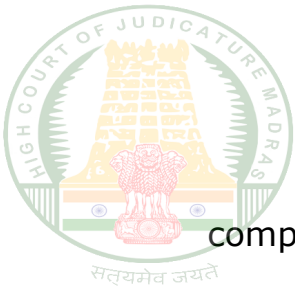


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***opined that in the first category of cases, the vacancies could not have been treated to be available for the purposes of filling up within the time prescribed under Section 151-A of the Act merely because a member of the House of a Legislature of a State had resigned and the same had been accepted by the Speaker. To arrive at the said conclusion, emphasis was laid on Section 84 of the Act. In the second category of cases, the Court pronounced that the vacancies would have to be construed as clear vacancies warranting action under Section 151-A of the Act."***

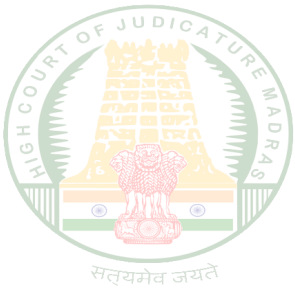
*[emphasis supplied]*

12. In the aforesaid decisions, the Supreme Court has emphatically held that the occurrence of a casual vacancy under Section 150 of the RP Act, triggered by the acceptance of a member's resignation under Article 190(3)(b) of the Constitution, does not automatically render that seat a "clear or available vacancy" for the mandatory holding of a bye-election within the six-month window prescribed by Section 151-A of the RP Act. It was also held that a distinction must be drawn between two categories of vacancies: (a) vacancies where an election petition claiming a



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composite relief under Section 84 of the RP Act to declare the election of the returned candidate void and to further declare another candidate duly elected under Section 101(b) of the RP Act has been filed and remains pending; and (b) vacancies where no such election disputes are pending. In the former category, a returned candidate cannot frustrate the statutory inquiry into corrupt practices or escape the tentacles of judicial scrutiny by submitting resignation. To prevent an unworkable constitutional anomaly wherein two individuals could simultaneously claim valid title to represent the exact same constituency, the rule of harmonious construction dictates that the Election Commission's obligation to hold an immediate bye-election stands legally suspended, and the seat is deemed unavailable until an order is passed on the latter part of Section 84 of the RP Act. Prima facie, the observations of the Supreme Court in the aforesaid decisions indicate that if an election petition seeks the composite relief of declaring the petitioner as duly elected under Section 84 of the RP Act, the vacancy cannot be treated as a "clear vacancy" available for a bye-election.



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13. Such being the legal position, we are of the view that in matters touching upon the purity of the democratic process, a narrow and pedantic interpretation of *locus standi* cannot be applied. The premature holding of bye-elections not only inflicts an enormous drain on the public exchequer funded by taxpayers, but also risks a severe constitutional deadlock by potentially yielding two validly elected representatives for a single constituency. As a citizen of India, a registered voter within the State, and an officer of the court, the petitioner possesses a vital interest in ensuring that the Election Commission operates strictly within its statutory boundaries under the RP Act. Consequently, the submission advanced by the learned counsel for the contesting respondents that the petitioner does not have the *locus standi* as he is not an elector in those specific constituencies fails to pass muster.

14. However, the nuanced arguments concerning the date of vacancy vis-à-vis the date of filing the election petition, alongside the maintainability of the election petitions highlighted by the ECI, require a deeper examination.



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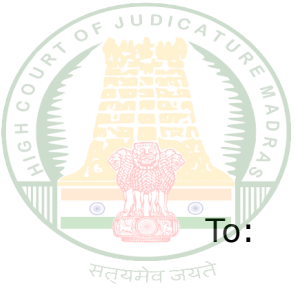
15. Accordingly, let notice be issued to the respondents who are not represented today. All the respondents are directed to file their comprehensive counter-affidavits traversing all factual and legal assertions within a period of three weeks from today.

Post the matter on 31.7.2026. Till then the first respondent/ Election Commission of India is restrained from issuing any notification for bye-election in respect of the constituencies, where the returned candidates resigned, as asserted in the writ petition.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)  
10.07.2026

Index: Yes  
NC : Yes

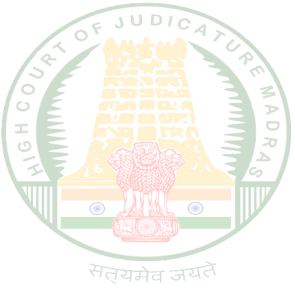
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To:

- 1.The Secretary  
Election Commission of India  
Nirvachan Sadan, Ashoka Road,  
New Delhi - 110 001
  
- 2.The Secretary  
Union of India  
Ministry of Law and Justice,  
Department of Legislative Affairs,  
Shastri Bhawan,  
New Delhi - 110 001.
  
- 3.The Secretary  
Tamil Nadu Legislative Assembly  
Secretariat  
Legislative Assembly Building,  
Chennai - 600 009.



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THE HON'BLE CHIEF JUSTICE  
AND  
G.ARUL MURUGAN,J.

(sasi)

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