Neutral Citation No:=2024:PHHC:044718-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7407-2024
Reserved on : 02.04.2024
Pronounced on: 03.04.2024

Kunal Chanana ......Petitioner

Versus

Election Commission of India and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Simar Pal Singh, Advocate, for the petitioner
(appeared through Virtual Mode)
Mr. Prateek Gupta, Advocate, for respondent No.1.

Mr. Baldev Raj Mahajan, Advocate General, Haryana, assisted by
Mr. Naveen S. Bhardwaj, Addl. AG, Haryana,
Mr. Samarth Sagar, Addl. AG, Haryana,
Mr. Manish Dadwal, AAG, Haryana,
for respondent Nos. 2 and 3.

SUDHIR SINGH, J.

By way of the present writ petition, the petitioner has sought issuance of an appropriate writ for quashing the impugned Press Note/Notification dated 16.03.2023 (Annexure P-1) issued by respondent No.1 for holding bye-election of the Assembly Constituency No.21-Karnal, Haryana. The petitioner has also sought interim relief for staying operation of the impugned Press Note/Notification, during the pendency of the present writ petition.

2. As per the facts on record, the Assembly Elections for the State of Haryana were held in 2019. Mr. Manohar Lal (who

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later on became the Chief Minister, Haryana) was elected a Member of Legislative Assembly from Karnal constituency. The term of the State Legislative Assembly, which commenced on 04.11.2019, is to expire on 03.11.2024. However, it so happened that Mr. Manohar Lal resigned from his Membership on 13.03.2024 (A.N.) and it was accepted by the Speaker of the Legislative Assembly on the same day itself. Thus, there arose a vacancy in the Legislative Assembly in terms of Section 150 of the Representation of People's Act, 1951 (for short 'the Act').

3. Pursuant to the aforesaid occurrence of the vacancy, respondent No.1 issued the press note/notification in order to fill the said vacancy by way of a Bye Election. The said notification contained the dates of Gazette notification as 29.04.2024, nomination deadline as 06.05.2024, candidature's withdrawal deadline as 09.05.2024, polling as 25.05.2024, ballot counting as 04.06.2024 and the completion of the bye election process as 06.06.2024.

4. Notice of motion.

5. On advance notices having been served, Mr. Prateek Gupta, Advocate, appears and accepts notice on behalf of respondent No.1, whereas Mr. Naveen S. Bhardwaj, Addl. AG, Haryana, accepts notice on behalf of respondent Nos. 2 and 3. They have further filed their counters, which are taken on record.

6. Learned counsel for the petitioner has argued that the declaration of bye election result is slated for 04.06.2024, whereas the term of the Legislative Assembly is set to expire on

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03.11.2024. It is further contended that the Code of Conduct would be necessitated before the General Elections for the Legislative Assembly of Haryana and in this way, the new candidate will have only two effective months to discharge his duties. While referring to the provisions of Section 151A of the Act, it is contended that the tenure of the vacancy in question is less than one year and therefore, in terms of Proviso (a) to Section 151A of the Act, the impugned Press Note/Notification could not have been issued by respondent No.1 and the same is bad in law. He has further relied upon the judgments of the Nagpur Bench of the Bombay High Court in WP No.2251-2019 ***Mr. Sandeep Yashwantrao Sarode vs. Election Commission of India and others,*** decided on 12.04.2019 (Annexure P.6) and in WP No.1986-2024 ***Anil vs. Election Commission of India and others,*** decided on 26.03.2024 (Annexure P.7). It is further contended that the Election Commission of India did not challenge the said order (Annexure P-7) by way of an SLP before the Apex Court and rather, has chosen to issue a Press Note dated 27.03.2024 (Annexure P-8) withholding the Bye-Elections to the Akola West Assembly Constituency of Maharashtra pursuant to the order passed by the Bombay High Court in WP No.1986 of 2024 (supra).

7. Learned counsel for the petitioner submits that once the Election Commission of India has issued Press Note (Annexure P-8) in respect of a similarly circumstanced issue, though pertaining to an Assembly constituency in Maharasthra, its conduct of proceeding with the bye-election in terms of the

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impugned Press Note/Notification (Annexure P.1) as regards Karnal Constituency, is arbitrary and discriminatory and, the same is, thus, liable to be quashed by this Court. It is further submitted that in respect of the bye-election in question, a lot of public expense is involved and the public exchequer cannot be burdened with such huge expenses, especially when the remainder of the term of the member, is very less.

8. Per contra, Mr. B.R. Mahajan, learned Advocate General, Haryana, has opposed the petition, inter-alia, on the pleas that there is no bar against holding bye-election for a vacancy occurring in the State Legislative Assembly, if the remainder of the tenure in relation to that vacancy is less than one year. Mr. Mahajan, has extensively referred to Sections 150 and 151A of the Act, to contend that Section 150 makes it incumbent upon the Election Commission to fill the vacancy caused against any constituency being represented in the State Legislative Assembly within such time, as may be specified by the Election Commission of India, in that regard. It is submitted that the said obligation is mandatory and cannot be avoided under any circumstances. It is further submitted that as far as Section 151A of the Act is concerned, the same only prescribes a time limit within which the above mentioned obligation has to be carried out i.e. within six months from the date of occurrence of the vacancy. However, it is submitted that the said rigour of the time limit is not applicable in case the remainder of the tenure in relation to such vacancy is less than a year. In other words, in terms of proviso (a) to Section 151A, where the remainder of

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tenure in relation to a vacancy occurring in a constituency is less than one year, the Election Commission of India, would not be bound by the time limit of six months for conducting the bye-election. In support of the aforesaid submissions, Mr. Mahajan, has referred to the judgment of the Gauhati High Court in **Nagalanad Pradesh Congress Committee (NPCC) Vs. The Election Commission of India (ECI) and another, 2017(5) GauLR 651.** Mr. Mahajan, has further submitted that even in the judgment relied upon by the petitioner in **Sandeep Yashwantrao (supra)**, it has been held that there is no hard and fast rule about the period to be always of at least one year and all would depend upon the facts and circumstances of the case. Mr. Mahajan, has further contended that the decision of the Election Commission of India, in issuing the impugned notification dated 16.03.2024 (Annexure P-1), to conduct bye-election to the seat of Karnal, was perfectly justified, reasonable and in consonance with the mandate of Article 164(4) of the Constitution of India read with Section 150 of the Act, which requires that in case a person is appointed as a Chief Minister, who is not a member of the Legislative Assembly, then the said person is obligated under the Constitution to get himself elected as a member of the State Legislative Assembly within six months of taking oath as the Chief Minister, which in the instant case, was on 12.03.2024. With the aforesaid submissions, Mr. Mahajan, has prayed for dismissal of the writ petition.

9. On behalf of respondent No.1-Election Commission of India, Mr. Prateek Gupta, Advocate, has submitted that Section

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151A of the Act, provides for time limit for filling casual vacancies arising in any constituency and the proviso (a) to Section 151A of the Act, does not bar the Election Commission from holding any bye-election, where the remainder of the term of the vacancy is less than one year. Mr. Gupta, has taken a categoric stand that a bye-election can be held, even where the remainder term of a vacancy is less than a year in certain contingencies, especially like in the present case, where a person has become the Chief Minister, without being a member of the Legislative Assembly or Legislative Council. Therefore, in terms of the provisions of Article 164(4) of the Constitution, such person can remain the Chief Minister, for a period of six months, however, he shall have to get himself elected as a member of the State Legislative Assembly, within six months from the date of taking oath. Mr. Gupta, further submits that Article 164(4) of the Constitution, shall prevail over the provisions of Section 151A of the Act and the Election Commission, as a matter of consistent policy, and to fulfil the aforesaid constitutional requirement, holds a bye-election within six months of the assumption of the office of the Minister/Chief Minister (as the case may be), subject to availability of the vacancy/seat in the concerned State. Mr. Gupta, has further referred to para No. 6 of the reply filed on behalf of respondent No.1, which reads as under:-

> "6. In some of these cases, such bye-elections have been held where the vacancy was for less than one year and, in certain case, even for less than six months. Such opportunity of going to the electorate has been availed of

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not only by several ministers of the Central and State Governments. All illustrative list of cases, where special dispensation was given to the Chief Ministers to contest bye election, where remaining term of house was less than one year is as follows:-

Name of the vacancy	Date of occurrence of vacancy	Term of House	Remaining period from date of vacancy	Date of Announcement of election	Date of counting of votes	Remaining election
67-Tosham AC of Haryana	25.07.1986	24.06.1982 to 23.06.1987	10 Months+	01.11.1986 (approximately)	23.11.1986 & 24.11.1986	Approx. 7 months
83-Laxmipur (ST) AC of Odissa	23.03.1999	23.03.1995 to 22.03.2000	11 months+	31.05.1999 (approximately)	21.06.1999 & 23.06.1999	Approx. 9 months
10-Northern Angami-1 (ST) AC of Nagaland	24.05.2017	14.03.2023 to 13.03.2018	9 months+	29.06.2017	29.07.2017 & 03.08.2017	Approx. 7 months
21-Karnal AC of Haryana	14.03.2024	04.11.2019 to 03.11.2024	7 months+	16.03..2024	25.05.2024 & 04.06.2024	Approx. 5 months

10. It is also submitted by Mr. Gupta that Section 151A of the Act is a provision available to the Election Commission of India, to avoid any constitutional crisis in the absence of any express statutory bar in not holding the election. With the aforesaid submissions, he has made a prayer for dismissal of the writ petition.

11. Upon considering the rival submissions of the parties, the following questions arise for adjudication in the present petition:-

1. Whether in the light of proviso (a) to Section 151A of the Representation of the People's Act, 1951, the bye-election to a vacancy in a State Legislative Assembly, can

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be held where the remainder period of tenure of such vacancy, would be less than one year?

2. Whether in the given facts of the case, the mandate of Article 164(4) of the Constitution of India, is a valid consideration to examine the legality of the impugned notification?

3. Whether in the light of notification dated 27.03.2024 (Annexure P-8), bye-election to Assembly Constituency of Karnal, in pursuance to notification dated 16.03.2024 (Annexure P-1), is discriminatory?

12. We have heard the learned counsel for the parties and have also given our thoughtful considerations to the issues at hand.

13. Here it would be apposite to refer to the provisions of Sections 150 and 151A of the Act, which read as under:-

> "150. Casual vacancies in the State Legislative Assemblies.— 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 orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.
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> (2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.
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> 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."

A bare perusal of Section 150 of the Act, would indicate that whenever a casual vacancy occurs in the State Legislative Assembly, the Election Commission shall 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. However, it is noticeable that the aforesaid provision of Section 150 does prescribe any time limit for such vacancy to be filled up by the Election Commission. Now, Section 151A prescribes 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 Act.

14. While construing the aforesaid provisions, it has to be kept in mind that though the right to elect a person is fundamental to democracy, yet it is only a statutory right and the legislation governing the said right has to be strictly construed.

15. A plain reading of the aforesaid provision of Section 151A of the Act would show that the same commences with a

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non-obstante clause and clearly stipulates that notwithstanding anything contained in Sections 147, 149, 150 and 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. The holding of election within a specified time of six months is subject to two exceptions, namely, where the remainder of the term of a member to be elected in relation to a vacancy is less than one year and where the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period, then the principal part of the provision contained in Section 151A would not apply.

16. The provisions of Section 151A have already been interpreted by a Division Bench of the Gauhati High Court in **Nagalanad Pradesh Congress Committee (NPCC)'s case (supra),** wherein it was held as under:-

> "7. A bare reading of the above quoted Section makes it clear that there is no bar on the Election Commission of India to fill up the casual vacancy even if the remainder of the term of a member in relation to a vacancy is less than one year. Proviso (a) to Section 151 (*sic 151A*) is merely an exception to a statutory mandate that bye-election for filling up casual vacancy must be held within a period of six months from the date of occurrence of the vacancy. The proviso does not say that no bye-election shall be held to fill up a vacancy if the remainder of the term of a member in relation to a vacancy was less than one year."

It may be noticed that SLP No. 18701/2017 filed against the said Division Bench judgment of the Gauhati High

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Court, was dismissed as withdrawn vide order dated 25.01.2019 passed by the Hon'ble Apex Court.

17. Furthermore, reliance placed by the petitioner on the judgment in ***Sandeep Yashwantrao Sarode's case (supra),*** is misplaced, especially in view of what has been held in para No. 50 of the said judgment, which would read as under:-

> "50. In the present case, the arbitrariness and unreasonableness, which has gone into the impugned decision is in relation to the constituency itself and it would not be possible for the petitioner to demonstrate successfully that such unreasonableness has materially affected the result of the election of a particular candidate as this is something which could be proved only when it is shown that had it not been for such an arbitrary or unreasonable decision, a particular candidate would never have been elected or election of a particular candidate would have been materially affected. The challenge founded on the ground of unreasonableness and arbitrariness of a decision to fill casual vacancy by applying a different yardstick and by discriminating between two similarly situated constituencies, occupies a plane, different from the level on which stands the challenge raised on the ground of arbitrariness and unreasonableness shown in relation to a particular candidate. The reason being that the former challenge has a bearing upon the right of the electorate to have an elected representative for a reasonable period of time, though there can be no hard and fast rule about such period to be always of at least one year and all would depend upon the facts and circumstances and the strength of the reasons given by the ECI to fill a casual vacancy even for a period of shorter than one year, and the latter has material impact and that too directly on the result of the election of a returned candidate.

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> So, the remedy of election petition under Section 100 (1) (d) (iv) of the R.P. Act, 1951, would not be available here and this would fulfill the remaining requirement for removal of prohibition contained in Article 329 (b) on the jurisdiction of this Court under Article 226 of the Constitution of India."

18. Therefore, the contention of the petitioner while relying upon the judgment in **Anil's case** (supra), that no bye-election is to be held as regards the constitutency of a State Assembly where the remainder term of the vacancy is less than one year, is not tenable. It requires to be noticed here that when the finding returned in **Anil's case** (supra), is considered in the light of the finding returned in **Sandeep Yashwantrao Sarode's case (supra)**, it would emerge that the observations made in para 50 of **Sandeep Yashwantrao Sarode's** case (supra), were not brought to the notice of the Bench, at the time of rendering of the said judgment in ***Anil's*** *case (supra)*, which in our considered view would be contrary to **Sandeep Yashwantrao Sarode's** case (supra) itself.

19. Rather, the judgment rendered in the case of **Sandeep Yashwantrao Sarode (supra)**, upon which reliance is placed by the petitioner, clearly stipulates in para 50 thereof that there can be no hard and fast rule about such period being always of at least one year and all would depend upon the facts and circumstances and the strength of the reasons given by the Election Commission of India to fill a casual vacancy even for a shorter period. It transpires that SLP No. 11207/2019 filed against the aforesaid judgment stands dismissed as withdrawn vide order dated 01.04.2019 passed by the Hon'ble Apex Court.

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20. As already noticed above, the objective behind Section 151A of the Act, is not to leave any vacancy unfilled and/or any constituency unrepresented and which is why six months' period has been so provided. Though in proviso (a), it has been provided that nothing contained in this Section shall apply if the remainder of the term of a member in relation to a vacancy is less than one year, yet keeping in view the clear and an unambiguous object of the operating provisions of Section 151A, the said clause can only be termed to be clarificatory in nature so added by the legislature in its intent by way of an abundant caution.

21. The non-obstante clause in Section 151A of the Act, has an objective to achieve i.e. no seat of any constituency within the State should be left unrepresented. However, the language used in proviso (a) to Section 151A of the Act, as regards non-applicability of the provisions of Section 151A to it, if interpreted strictly, would defeat and oust the very objective. The only purpose as could be supposed from a plain reading thereof, is not to put the election machinery in place to avoid any expenses or resources, and except that, there seems to be none. It is settled law that non-obstante clause cannot be construed to take away the effect of any provision of the Act in which that section appears.

22. In **Dominion of India Vs. Shribai A. Irani, AIR 1954 SC 596**, it has been held by the Hon'ble Supreme Court as under:-

> "The non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting

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> down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non obstante clause cannot cut down the contruction and restrict the scope of its operation. In such cases, the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

23. Based on the interpretation of the statutory principles, it can be summed up that the non-obstante clause is not applicable to the Constitutional provisions; it is clarificatory in nature and does not limit the operation of the original statute; it is inserted by way of an abundant caution and not for limiting the operation of the original statute and that it cannot cull down the scope and objective of the original statute. Even if the general tenor of the non-obstante clause stipulates an overriding effect, its actual effect, must be perceived after a close reading of the actual clause.

24. In the given facts of the present case proviso (a) to Section 151A of the Act, is an exception and not a rule and thus, in our considered view a liberal interpretation thereof is required. The situation might have been different, had there not arisen any vacancy. Merely because the remainder of the term is less than one year, is no ground to debar the Election Commission of India, from holding the bye-election. Thus, Question No. 1 stands answered in the above terms.

25. As regards Question No.2, reference to Article 164(1), (2) and (4) of the Constitution of India is necessitated, which reads as under:-

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"**Article 164. Other provisions as to Ministers**

(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the State of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(1A and 1B) xx xx xx

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) xx xx xx

(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."

26. The ambit and scope of Article 164(4) came up for consideration before a Constitution Bench of Hon'ble Supreme Court in **Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and another, 1971(1) SCC 616**. The issue arose in connection with the appointment of Shri T.N. Singh, who was not a member of either house of Legislature of the State of Uttar Pradesh, as Chief Minister of Uttar Pradesh. The Constitution Bench referred to the position as prevailing in England. It was observed that invariably all Ministers must be members of the Parliament but if in some exceptional case, a Minister, is not a member of the Parliament, he can continue to be a Minister for a brief period during which he must get elected in order to continue as a Minister. This Court upholding the judgment of the High Court, rejected the challenge to the appointment of Shri T.N. Singh as Chief Minister in view of

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Article 164(4) of the Constitution. The Court opined that the Governor has the discretion to appoint, as a Chief Minister, a person, who is not a member of the legislature at the time of his appointment but the Chief Minister is required, with a view to continue in office as a Chief Minister, get himself elected to the legislature within a period of six consecutive months from the date of his appointment.

27. In **S.R. Chaudhuri v. State of Punjab, 2001(4) RCR (Civil) 600,** Hon'ble Supreme Court held as under:-

> "13. The absence of the expression "from amongst members of the Legislature" in Article 164(1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months, from the date of his appointment. Article 164(4) is, therefore, not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months.........
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> XXX XXX XXX
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> 24. The sequence and scheme of Article 164, which we have referred to in an earlier part of our order, clearly suggests that ideally, every minister must be a member of the Legislature at the time of his appointment, though in exceptional cases, a non-member may be given a ministerial berth or permitted to continue as a Minister, on ceasing to be a member, for a short period of six consecutive months only to enable him to get elected to the Legislature in the meanwhile. As a Member of the Council of Ministers, every Minister is collectively responsible to the Legislative Assembly. A Council of Ministers appointed during the term of a Legislative Assembly would continue in office so long as they continue to enjoy the confidence of the Legislative Assembly. A person appointed as a Minister, on the advice of the Chief Minister, who is not a member of the Legislature, with a view to continue as a Minister must, therefore, get elected during a short period of six consecutive months after his appointment, during the term of that Legislative Assembly and if he fails to do so, he must

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cease to be a Minister. Reappointment of such a person, who fails to get elected as a member within the period of grace of six consecutive months, would not only disrupt the sequence and scheme of Article 164 but would also defeat and subvert the basic principle of representative and responsible Government. Framers of the Constitution by prescribing the time limit of "six consecutive months" during which a non-legislator Minister must get elected to the Legislature clearly intended that a non-legislator cannot be permitted to remain a Minister for any period beyond six consecutive months, without getting elected in the meanwhile. Resignation by the individual concerned before the expiry of the period of six consecutive months, not followed by his election to the legislature, would not permit him to be appointed a Minister once again without getting elected to the legislature during the term of the Legislative Assembly. The "privilege" of continuing as a Minister for "six months" without being an elected member is only a one time slot for the individual concerned during the term of the concerned Legislative Assembly. It exhausts itself if the individual is unable to get himself elected within the period of grace of "six consecutive months". The privilege is personal for the concerned individual. It is, he who must cease to be a Minister, if he does not get elected during the period of six months. The 'privilege' is not of the Chief Minister on whose advice the individual is appointed. Therefore, it is not permissible for different Chief Ministers, to appoint the same individual as a Minister, without him getting elected, during the term of the same assembly. The individual must cease to be a Minister, if during a period of six consecutive months, starting with his initial appointment, he is not elected to the assembly. The change of a Chief Minister, during the term of the same assembly would, therefore, be of no consequence so far as the individual is concerned. To permit the individual to be reappointed during the term of the same legislative assembly, without getting elected during the period of six consecutive months, would be subversion of parliamentary democracy. Since Article 164(4) provides a restriction for a non-legislator Minister to continue in office beyond a period of six consecutive months, without being elected, it clearly demonstrates that the concerned individual appointed as a Minister under Article 164(1) without being a member of the Legislature must cease to be a Minister unless elected within six consecutive months. Re- appointing the individual without his getting elected, would, therefore, be an abuse of Constitutional provisions and subversive of constitutional guarantees. Every Minister must draw his authority, directly or indirectly, from the political sovereign - the Electorate. Even a most liberal interpretation of Article 164(4) would show that when a person is appointed as a Minister, who at that time is not a member of the legislature, he becomes a Minister on clear constitutional terms that he shall continue as a Minister for not more than six consecutive months, unless he is able to get elected in the

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> meanwhile. To construe this provision as permitting repeated appointments of that individual as a Minister, without getting elected in the meanwhile, would not only make Article 164(4) nugatory but would also be inconsistent with the basic premise underlying Article 164. It was not the intention of the Founding Fathers that a person could continue to be a Minister without being duly elected, by repeated appointments, each time for a period of six consecutive months. If this were permitted, a non-legislator could by repeated appointments remain a Minister even for the entire term of the Assembly - a position wholly unacceptable in any parliamentary system of Government. Such a course would be contrary to the basic principles of democracy, as essential feature of our Constitution. The intention of the framers of the Constitution to restrict such appointments for a short period of six consecutive months, cannot be permitted to be frustrated through manipulation of "reappointment"..........”

28. It is, thus, manifest that a Minister/Chief Minister, shall cease to hold office, upon expiration of the period of six months, if he does not become a member of the State Legislative Assembly, within the said period of six months. Therefore, a natural consequence emanating from the aforesaid provisions contained in Article 164(1), (2) and (4) of the Constitution of India is that where a person is appointed as a Minister/Chief Minister in a State and such person is not an elected member to the State Legislative Assembly, then in order to continue on the said post, such candidate has to seek election to such Assembly seat within a period of six months from the date he or she takes oath.

29. Evidently, Shri Manohar Lal, the previous Chief Minister of the State of Haryana, had tendered his resignation along with his council of Ministers to the Governor, vide letter dated 12.03.2024 and the said resignation was accepted by the Governor with effect from 12.03.2024 itself. Subsequently, Shri

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Manohar Lal, who was elected as a Member of Legislative Assembly, from Karnal, resigned from his seat vide letter dated 13.03.2024 (A.N.), which was accepted by the Hon'ble Speaker, Haryana Vidhan Sabha, on 13.03.2024 (A.N.) itself, thereby making the said seat vacant. The new Cabinet under Shri Naib Singh Saini, Chief Minister, took oath on 12.03.2024 and since Shri Saini is not a member of the Legislative Assembly, therefore, in terms of Article 164(4) of the Constitution of India, he is obligated to get himself elected as a member of the State Legislative Assembly within six months of taking oath as the Chief Minister i.e. within six months from 12.03.2024. It appears that Karnal constituency is the only vacancy available for holding of bye-election and considering the fact that the remainder term of the new incumbent Chief Minister being less than one year and the vacancy being available, no fault can be found with the impugned notification (Annexure P.1) as regards the Karnal constituency, as the said act of the respondent-Election Commission of India, only facilitates the mandate of Article 164(4) of the Constitution of India.

30. If the elections are not to be held in relation to the vacancy of Karnal, as sought to be contended by the learned counsel for the petitioner, the result would be that the said constituency shall remain unrepresented until the determination of the term of the State Legislative Assembly i.e. in November, 2024, despite the availability of the vacancy. That being the position, the Election Commission of India, cannot be said to have committed any error in declaring the bye-election to the

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constituency of Karnal, considering the mandate of Article 164(4) of the Constitution of India. Accordingly, in the given facts of the present case, it is held that the provision of Article 164(4) is a valid consideration for the Election Commission of India, for declaring holding of election for the vacant seat of a constituency in the State Legislative Assembly. Question No.2 is answered accordingly.

31. We also do not find any substance in the submission of the learned counsel for the petitioner that the act of the Election Commission of India, in proceeding to conduct bye-election of Karnal Assembly Constituency, is discriminatory in the light of the notification dated 27.03.2024 (Annexure P.8). It may be noticed that the notification dated 27.03.2024 (Annexure P.8) has been issued by the Election Commission of India for withholding the election of Akola West Assembly Constituency of Maharashtra, keeping in view the judgment passed in **Anil's case (supra)**. In our considered view, mere issuance of Annexure P.8 for withholding election cannot be construed to be a discriminatory act on the part of the Election Commission of India, more so, when the same is in pursuance to a judicial order passed by the Nagpur Bench of the Bombay High Court and not a voluntary act of the Election Commission of India, on its own volition. Question No.3 is answered in negative.

32. At this stage, the learned counsel for the petitioner has reiterated his argument that no purpose would be served by electing a candidate for a short duration which is less than one year as the same would involve additional expenditure on the

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State exchequer, employment of additional manpower for completing the election proceedings, more so, when the General Elections to the State Legislative Assembly in the State of Haryana, are due in the month of November, 2024.

33. We have considered the aforesaid submissions of the learned counsel for the petitioner, however, we do not find any force in the same, especially in the light of the judgment rendered by the Hon'ble Supreme Court in the case of **Pramod Laxman Gudadhe vs Election Commission Of India, 2018 AIR (SC) 2356,** wherein a similar objection was turned down by observing as under:-

> ".......the intention of the Parliament is not to keep a constituency remaining unrepresented. The concern expressed with regard to load on the exchequer cannot be treated as a ground. It is so because the representative democracy has to sustain itself by the elected representatives......"

34. Learned counsel for the petitioner has also placed reliance on the judgment of the Karnataka High Court in **Sri A.P. Ranganatha Vs. the Chief Election Commissioin,** WP-46107-2018 decided on 29.10.2018, but the same is of no help to him as the said judgment is distinguishable on facts and furthermore, the earlier judgment of the Division Bench of the Gauhati High Court in **Nagalanad Pradesh Congress Committee's** case (supra), was either not brought to the notice or not considered by the Karnataka High Court in the case of **Sri A.P. Ranganatha's** (supra).

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35. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

36. All pending applications (if any), shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

03.04.2024

Ajay Prasher/ds

Whether speaking/ reasoned : Yes/No

Whether reportable : Yes/No

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