2026:MHC:4766

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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2026
DELIVERED ON : 27.11.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.27064 of 2026
CNR:{HCMA011570482026}
W.M.P.Nos.39588, 29634, 33469, 39587, 29636, 29637, 33470 and 36872 of 2026

Case QR

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

Petitioner(s)

Vs

1.The Election Commission of India
through its Secretary, Nirvachan Sadan,
Ashoka Road, New Delhi - 110 001.

2.The Union of India
through the Secretary,
Ministry of Law and Justice,
Department of Legislative Affairs,
Shastri Bhawan, New Delhi - 110 001.

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3.The Tamil Nadu Legislative Assembly Secretariat
through its Secretary,
Legislative Assembly Building,
Chennai - 600 009.

4.C.Joseph Vijay
S/o.S.A.Chandrasekaran,
Door No.36, Casuarina Drive,
Kapaleeswarar Nagar, Neelanagarai,
Chennai - 600 041.

5.C.Vijayabaskar,
S/o.Chinnathampi,
No.14/28, Sowndaraiya Street,
Illupur, Illuppur Taluk, Pudukkottai.

6.M.R.Vijayabhaskar
S/o.Ramasamy,
No.3/325, NSK Nagar, LNS Post,
Aandankovil East, Karur - 639 002.

7.Dr.E.Subbaiya @ Esakki Subbaiya
S/o.Esakki Pandiyan,
No.31-70, Utchi Makaliyamman Kovil Street,
Prancheri, Gopalasamudram,
Cheranmahadevi, Tirunelveli - 627 401.

8.S.Inigo Irudayaraj
S/o.I.Stanislaus,
No.4341, 1st South Main Road,
Sri Kabaliswarar Nagar, Thiruvanmiyur,
Neelangarai, Chennai - 600 041.

9.R.D.Shekar
S/o.M.Rajamannar,
No.82B, First Main Road,
Thiruvalluvar Nagar, Kodungaiyur,
Chennai - 600 118.

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10.K.K.Chellapandiyan
S/o.Kannan,
Door No.1, Ambalakara Street,
Keeranur, Kulathur Taluk,
Pudukkottai - 622 502.

11.V.P.Mathiyalagan
S/o.Palanisamy,
No.43/2, Malar Garden, Sivasakthi Nagar East,
Thanthondrimalai, Karur - 639 005.

12.Kanthimathinathan
S/o.Sankaranarayanan,
No.19-H, High School Road,
Ambasamudram, Tirunelveli - 627 401.

13.S.Jeyakumar, S/o.P.C.Subramani,
Door No.2/14, Shanmugapuram,
Ponmudi Post, Perundurai Taluk,
Erode District - 638 056.

14.Thoppuvenkatchalam @ N.D.Venkatachalam,
S/o.Deivasikamani Gounder,
No.186/14, R.S.Road, Thoppupalayam,
Perundurai Taluk, Erode District - 638 052.

(*R13 and R14 are impleaded as per order dated 29.09.2026 in WMP No.32167 of 2026*)

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing election commission to declare that the vacancies caused by the resignations of the respective returned candidates from the (i) 141 - Tiruchirappalli (East) Assembly Constituency, (ii) 103 - Perundurai Assembly Constituency, (iii) 179 - Viralimalai Assembly Constituency, (iv) 135 - Karur Assembly Constituency, (v) 225 - Ambasamudram Assembly

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Constituency are not clear vacancies or vacancies available for being filled up under Section 151-A of the Representation of the People Act, 1951, and consequently direct Respondent No.1, the Election Commission of India, to treat the said vacancies as not available for the conduct of bye-elections for so long as the respective election petitions challenging the elections of the returned candidates remain pending and undecided before this Court. (*Prayer amended vide order dated 08.09.2026 made in WMP.No.32171 of 2026)*

For Petitioner(s): Mr.V.R.Shanmuganathan

For Respondent(s): Mr.Dama Seshadri Naidu,
Senior Counsel [Thru VC]
for Mr.Niranjan Rajagopalan for R1

Mr.AR.L.Sundaresan,
Additional Solicitor General of India
asst by Dr.V.Venkatesan, SCGSC for R2

Mr.Vijay Narayan, Advocate General
asst by Mr.J.Lenin,
Special Government Pleader and
Mr.Akash Sri Nanda
Government Advocate for R3

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

Mr.K.Suresh for R5

Mr.Gopala Sankaranarayanan,
Senior Counsel [Thru VC]
for Mr.K.Suresh for R6

Mr.Sathish Parasaran, Senior Counsel

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for Mr.P.J.Rishikesh for R7

Mr.Richardson Wilson
for R8 and R9

No apeparance for R10

Mr.G.Murugendran for R11

Mr.R.Viduthalai, Senior Counsel
for Ms.R.Revathy for R12

Mr.B.Arvind Srevatsa for R13

Mr.D.Gopal for R14

ORDER

THE CHIEF JUSTICE

PRELUDE:

A democratic franchise, once exercised, vests a single representative with a single, indivisible seat in the Legislature, to be held in trust for the electorate. The central question that arises for determination before this Court is whether the Election Commission of India must mechanically set the wheels of a bye-election in motion upon the resignation of an incumbent, even while the true title to that very seat remains the subject-matter of an election petition pending adjudication, in which a declaration under Section 84 of the Representation of the People Act, 1951 [for brevity, "the

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Act"] is claimed. To fill a legislative seat prematurely, by way of a bye-election to a casual vacancy, while a statutory challenger is seeking a declaration that he, or another candidate, has been duly elected, is to invite a profound constitutional anomaly – an indivisible seat claimed by two persons. The law cannot permit resignation to be used as a device to escape or subvert the solemn judicial scrutiny of electoral purity, nor can it allow a new representative to be hastily inducted into a seat whose lawful entitlement is still *sub judice*. Accordingly, this Court is called upon to harmonise the statutory mandate of timely representation with the imperative of preserving judicial finality, so that the verdict of the electorate is not displaced before its true import is judicially determined.

BACKGROUND FACTS:

2.1. The general election to the 17th Tamil Nadu Legislative Assembly was held on 23.04.2026, and the results were declared on 04.05.2026. Thereafter, several returned candidates resigned from their seats. The Speaker accepted each resignation under Article 190(3)(b) of the Constitution of India, and the consequent vacancy in each case was notified in the Gazette. For instance, the

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resignation of the 13th respondent from 103–Perundurai, tendered by letter dated 25.05.2026, was accepted under Rules 21 and 22 of the Tamil Nadu Legislative Assembly Rules, and the resulting vacancy was notified by Letter No.4019/2026-1 of the Tamil Nadu Legislative Assembly Secretariat (Bills-III) dated 25.05.2026, published in Gazette Extraordinary No.259 of the same date.

2.2. Election petitions were then filed before the Election Court. According to the petitioner, fifty-four such petitions were presented between 03.06.2026 and 18.06.2026. Five of them, relating to the five constituencies named in the prayer, are the subject-matter of the present proceedings. Three more (ELP Nos.50, 51 and 52 of 2026) relate to 12–Perambur, a seat which the fourth respondent retained and which is not in issue.

2.3. The material facts, taken from the pleadings and from the annexures to the written submissions of the sixth respondent, are tabulated hereunder:

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Constituency	Returned candidate (date of resignation and vacancy)	Election petition and petitioner	Presented on	Candidates; votes (returned candidate v. petitioner)	Outer date under s.151-A
141 – Tiruchirappalli (East)	C.Joseph Vijay, R4 (10.05.2026)	ELP 53/2026; S. Inigo Irudayaraj, R8	17.06.2026	20; 91,381 v. 63,965	09.11.2026
103 – Perundurai	S.Jeyakumar, R13 (25.05.2026)	ELP 43/2026; Thoppu Venkatchalam @ N.D. Venkatachalam, R14	17.06.2026	13; 70,302 v. 60,609	24.11.2026
225 – Ambasamudram	Dr.E.Subbaiya, R7 (26.05.2026)	ELP 2/2026; Kanthimathinathan, R12 (an elector)	15.06.2026	5; 65,589 v. not applicable (runner-up 55,344)	25.11.2026
179 – Viralimalai	C.Vijayabaskar, R5 (16.06.2026)	ELP 10/2026; K.K. Chellapandiyan, R10	17.06.2026	26; 1,05,773 v. 40,397 (petitioner third; runner-up 43,700)	15.12.2026
135 – Karur	M.R. Vijayabhaskar, R6 (29.06.2026)	ELP 11/2026; V.P. Mathiyalagan, R11	17.06.2026	79; 71,542 v. 69,721	28.12.2026

2.4. The chronology of events is of significance to the controversy and is, therefore, set out precisely. In Tiruchirappalli (East), Perundurai, Ambasamudram and Viralimalai, the resignation and the consequent vacancy came before the election petition was presented, by 38 days, 23 days, 20 days and one day respectively. In Karur, the election petition was presented 12 days before the resignation took effect.

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2.5. Section 81(1) of the Act provides that an election petition may be presented within 45 days from the date of election of the returned candidate, which, by virtue of Section 67-A of the Act, is the date on which the returned candidate is declared elected. With the results declared on 04.05.2026, all the five election petitions in question were presented within time. No bye-election has been notified for any of the five constituencies.

2.6. The fourth respondent was declared elected from both Tiruchirappalli (East) and Perambur. Under Section 70 of the Act and Rule 91 of the Conduct of Elections Rules, 1961, he was obliged to relinquish all but one of the seats. He resigned from Tiruchirappalli (East) on 10.05.2026 and retained Perambur.

2.7. The election petitions seek different reliefs. The petition for Tiruchirappalli (East) asks that the election of the returned candidate be declared void and that the petitioner be declared duly elected. The petition for Ambasamudram asks for a declaration under Sections 84 and 101 of the Act in favour of the second

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respondent therein "*or such other candidate as is found entitled*". The writ petitioner, the Election Commission and most of the contesting respondents proceed on the footing that each of the election petitions relating to the five constituencies contains a claim under Section 84 of the Act. The prayer actually made in each petition is considered constituency-wise in Part I of this judgment.

THE WRIT PETITION AND THE INTERIM ORDERS:

3.1. The petitioner, who claims to be a registered elector in Tamil Nadu, contends that as per the decisions of the Supreme Court in *D.Sanjeevayya v. Election Tribunal, Andhra Pradesh*[1]; *Election Commission of India v. Telangana Rastra Samithi*[2]; and *Pramod Laxman Gudadhe v. Election Commission of India*[3], a vacancy in a constituency in respect of which an election petition containing a claim under Section 84 of the Act is pending is not a vacancy "*available for being filled up*". Section 151-A of the Act does not alter that position, because its non obstante clause covers

1 AIR 1967 SC 1211
2 *(2011) 1 SCC 370*
3 *(2018) 7 SCC 550*

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Sections 147, 149, 150 and 151 of the Act and does not mention Sections 84, 98(c) or 101 of the Act. A returned candidate cannot defeat an election petition or escape the consequences under Section 8-A of the Act, by resigning. If a bye-election is held and the election petitioner subsequently obtains a declaration in his favour, two persons would claim one seat.

3.2. On 10.07.2026, this Court issued notice and recorded the *prima facie* view that where an election petition seeks the composite relief under Section 84 of the Act, the vacancy cannot be treated as a clear vacancy. We overruled the preliminary objection as to the locus stani, observing that a narrow view of locus ought not to be taken where the purity of the democratic process is in issue, and noted that the contentions regarding the date of vacancy vis-a-vis the date of presentation of the election petition, and regarding the maintainability of the election petitions, needed deeper examination. We restrained the Election Commission from issuing any bye-election notification for the constituencies where the returned candidates had resigned. The said interim order was extended from time to time and continues to be in force.

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3.3. At this juncture, it is apposite to mention two developments that have taken place since the interim order was passed, as each of them has removed the claim under Section 84 of the Act from the constituencies in issue:

(i) By an order dated 08.09.2026 in O.A.Nos.829 and 830 of 2026, the learned Judge trying ELP No.43 of 2026 struck out paragraphs 12 to 18 of that election petition and dismissed it. The election petition had been filed by the 14th respondent against the 13th respondent. The said order cleared the legal obstacle that stood in the way of a bye-election to 103 – Perundurai, subject to the result of any further proceedings that may lie against it.

(ii) Qua Ambasamudram, the learned Judge trying ELP No.2 of 2026 reserved orders on 24.09.2026 on O.A.No.866 of 2026 (for rejection of the election petition) and O.A.No.839 of 2026 (for striking out of the prayer under Section 84 of the Act). By an order dated 01.10.2026, the learned Judge declined to

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reject the election petition, but struck out the prayer that the runner-up, V.P.Durai, be declared duly elected. The petition was presented by the 12th respondent, an elector, against the 7th respondent, who is the returned candidate. The effect of that order is considered in Part I of this judgment.

CONTENTIONS:

THE PETITIONER:

4.1. The petitioner relies on the three aforesaid decisions of the Supreme Court on the grounds set out above. He places reliance on the passage in the decision in *Sanjeevayya* (supra) to the effect that a returned candidate cannot get rid of an election petition by resigning "*whatever the reason for his resignation may be*". He further relies on paragraph 46 of *Telangana Rastra Samithi* (supra), which says that vacancies in which election petitions "*had been filed and were pending*" cannot be treated as available for being filled up within the time in Section 151-A of the Act, and that the Commission "*will have to wait*" until a decision is rendered on the latter part of Section 84 of the Act. He also points to the

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passage from May's *Parliamentary Practice* quoted in *Sanjeevayya* (paragraph 7), namely, a writ for a new election is not issued until the time for presenting election petitions has expired, and is withheld if the seat is claimed for another candidate.

4.2. It is further submitted that, in as much as the Election Commission of India has stated on affidavit that it does not propose to notify bye-elections until the claims under Section 84 of the Act are decided, the writ petition deserves to be allowed.

THE ELECTION COMMISSION (R1)

5.1. It is submitted by learned Senior Counsel appearing on behalf of the first respondent that the Election Commission is not an adversary of any party and that it does not propose to notify bye-elections for Tiruchirappalli (East), Perundurai, Viralimalai, Karur and Ambasamudram until the election petitions carrying a claim under Section 84 of the Act are decided.

5.2. Learned Senior Counsel submitted that the test is whether a claim under Section 84 of the Act is pending at the time

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when the vacancy falls to be filled and not whether the resignation preceded or followed the presentation of the petition by a few days. He added that the decision of the Supreme Court in *Telangana Rastra Samithi* (supra) uses preemptory words and that the Commission is, therefore, complying with binding law and is not exercising a choice among options. Even on the contrary reading, namely, that the decision in *Sanjeevayya* (supra) only left it open to the Commission to wait, the discretion rests with the Commission, and the fourth respondent himself accepts that the Commission has this autonomy.

5.3. It is further submitted that the Parliament has given every candidate and elector 45 days to claim relief under Section 84 of the Act. He emphasised that, in the light of the decision of the Supreme Court in *Telangana Rashtra Samithi* (supra), a returned candidate who resigns within that period would otherwise be in a position to defeat Sections 84, 98(c) and 101(b) of the Act.

5.4. It is also submitted that the Commission cannot express a view on the merits of any election petition, including whether a

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prayer under Section 84 of the Act will succeed in a multi-candidate contest; that the deferment of bye-election is not indefinite; and that it would end when the Election Court decides the claim under the latter part of Section 84 of the Act, whether by judgment, rejection of the petition or striking out of the prayer, as happened at Perundurai and Ambasamudram. He also submitted that Section 86(7) of the Act requires election petitions to be tried as expeditiously as possible, with an endeavour to conclude the trial within six months from the date of presentation. He added that in Perundurai and Ambasamudram constituencies no claim under Section 84 of the Act is now pending and that the vacancies are, therefore, available, subject to any appeal and to the interim order. It is pleaded that the interim order be clarified so that it does not apply to Perundurai and Ambasamudram constituencies.

THE SECOND RESPONDENT

6. Learned Additional Solicitor General of India submitted that it is for the Election Commission of India to take decision in accordance with law and the Union of India has no role to play in this petition.

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THE THIRD RESPONDENT

7. Learned Advocate General submitted that the third respondent cannot take sides in this petition and that it is left open to the Election Commission of India to decide the question of bye-elections, subject to the orders to be passed in this petition.

THE FOURTH RESPONDENT

8.1. It is submitted that the petition is in the nature of proxy litigation. Each election petitioner can protect his own interest, and none has asked for a postponement in his own petition. The present petition seeks to keep five constituencies without an MLA, thereby prejudicing several lakhs of voters for the benefit of five defeated candidates.

8.2. It is further submitted that, under Article 190(3)(b) of the Constitution of India, the seat becomes vacant "*thereupon*" on acceptance of the resignation. Rules 21 to 23 of the Tamil Nadu Legislative Assembly Rules treat filling the vacancy as the ordinary consequence. The resignation of the fourth respondent was made

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and accepted on 10.05.2026. No election petition was pending on that date. Section 151-A of the Act lists only two exceptions and the pendency of an election petition is not among them. Section 151-A of the Act came into force with effect from 01.08.1996 and prevails over earlier provisions such as Sections 80, 84 and 101 of the Act. If there is a gap, only Parliament can fill it. Section 53(2) of the Act is premised on a two-candidate contest, and 20 candidates stood in Tiruchirappalli (East).

8.3. It is submitted that the decision of the Supreme Court in *Sanjeevayya* (supra) involved a petition which had been filed and issues framed nearly two years before the resignation; that there were only two candidates in the contest; and that, at the time when the said case was decided, there was no time limit for bye-elections. The decisions in *Telangana Rastra Samithi* and *Sanjeevayya* (supra) both rest on a competing claim existing on the date of resignation. The decision in *Gudadhe* (supra) divides vacancies into those where election petitions "*had been filed and are pending*" and all other vacancies, and it was further held that that Parliament did not intend to keep a constituency unrepresented.

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8.4. Learned Senior Counsel relied on the decisions in *Vishwanatha Reddy v. Konappa Rudrappa Nadgouda*[4]; *Muniraju Gowda P.M. v. Munirathna*[5]; *Jamuna Prasad Mukhariya v. Lachhi Ram*[6]; *Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil*[7]; *Prakash Khandre v. Dr. Vijay Kumar Khandre*[8]; *D.K.Sharma v. Ram Sharan Yadav*[9]; and *Thiru John v. Returning Officer*[10]. It is contended that the "thrown away votes" rule applies only where two candidates contest; that so no relief under Section 84 of the Act is realistically available in any of the five constituencies; and that the Election Commission has never considered these decisions and has applied the decision in *Sanjeevayya* (supra) mechanically to all five constituencies.

8.5. It is submitted that as on 17.06.2026 the fourth respondent was no longer the returned candidate, so that the election petition could not comply with Section 82 of the Act, which

4 *AIR 1969 SC 604*
5 *(2020) 10 SCC 192*
6 *(1954) 2 SCC 306*
7 *(1994) 1 SCC 682*
8 *(2002) 5 SCC 568*
9 *1993 Supp (2) SCC 117*
10 *(1977) 3 SCC 540*

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requires the returned candidate to be impleaded as respondent to the election petition. He added that a person who has ceased to be the returned candidate cannot be "resurrected" for this purpose.

8.6. It is also submitted that the MLAs serve the people and the post is not private employment. Any delay deprives lakhs of voters of a representative in the first year of a five-year term. He relies on the decisions of the Supreme Court in *Afjal Ansari v. State of Uttar Pradesh*[11], and *Rahul Gandhi v. Purnesh Ishwarbhai Modi*[12], for the weight given to the electorate's right to representation. He also contends that this court can mould relief under Article 226 of the Constitution of India and direct the Commission to hold the bye-elections.

THE FIFTH RESPONDENT

9.1. Learned counsel for the fifth respondent confines his submissions to what he describes as the limited issue, namely, whether the mere presence of a prayer under Section 84 of the Act in ELP No.10 of 2026 can indefinitely prevent the Commission from

11 *(2024) 2 SCC 187*
12 *(2024) 2 SCC 595*

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conducting a bye-election to 179 – Viralimalai, when (a) the vacancy arose before the election petition was presented; (b) the election petitioner stood only third; (c) the contest was multi-cornered; (d) the election petition contains no material facts satisfying Sections 101(a) or 101(b) of the Act; and (e) the additional declaration sought is arithmetically and legally incapable of being granted.

9.2. Learned counsel submits that the resignation of the fifth respondent was accepted and took effect on 16.06.2026, whereupon the seat became vacant under Article 190(3)(b) of the Constitution of India. The Commission's own counter records that ELP No. 10 of 2026 was presented only on 17.06.2026. An election petition is a special statutory proceeding that comes into existence only on its presentation under Sections 80, 80-A and 81 of the Act, and the Act knows no "*retrospective pendency*".

9.3. It is submitted that the election petitioner, K.K.Chellapandiyan, trailed the returned candidate by 65,376 votes and the runner-up by 3,303. Even if all the votes polled for the

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returned candidate were excluded, merely to test the legal possibility of the relief, the election petitioner would not become the candidate with the highest number of votes.

9.4. It is also submitted that Section 150 of the Act uses the word "*shall*", and Section 151-A reinforces it by providing that the bye-election "*shall be held*" within six months, with an overriding clause over Sections 147, 149, 150 and 151 of the Act. Parliament prescribed only two exceptions and neither is invoked for the Viralimalai constituency.

9.5. Learned counsel assailed the stand of the Election Commission that it does not propose to notify a bye-election and submitted that Article 324 of the Constitution of India cannot create an exception that Parliament has not enacted. Parliament, he pleaded, fixed the time limit with the possibility of a prayer under Section 84 of the Act in view, and deliberately included no exception for the pendency of an election petition.

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9.6. He submitted that the apprehension of two representatives is illusory, because the election petitioner cannot satisfy either limb of Section 101 of the Act. A bye-election would neither terminate ELP No.10 of 2026 nor prevent adjudication of any properly pleaded corrupt practice, and if a corrupt practice is proved, Sections 99 and 8-A of the Act can still follow. He added that the election petition examines the earlier election, while the bye-election fills a later vacancy and the two operate in distinct legal fields. If the challenge fails, the bye-election is unaffected. If the election is declared void without a further declaration, the person elected at the bye-election alone represents the constituency.

THE SIXTH RESPONDENT:

10.1. Learned counsel for the sixth respondent first challenges the locus standi of the writ petitioner, contending that the petitioner has not stated the Assembly constituency in which he is registered, nor shown any link with any of the five constituencies. It is contended that a third-party busybody who has no affected legal interest cannot impede the election process. In support of the said

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submission, reliance is placed on the decisions of the Supreme Court in *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*[13]; *Jyoti Basu v. Debi Ghosal*[14]. He submitted that in the decisions relied on by learned counsel for the petitioner, the challenge to the holding of the bye-election was made by candidates and not by third parties; and that the only interest represented in this public interest litigation is that of the individuals who filed the election petitions, and not that of the general electorate, whose interest lies in an early bye-election.

10.2. On the merits, he submits that the acceptance of his resignation with effect from 29.06.2026 vacated the Karur seat under Article 190(3)(b) of the Constitution of India read with Section 150 of the Act, so that under Section 151-A of the Act a bye-election was mandatory within six months, subject only to the stated exceptions. The further exception carved out in *Sanjeevayya* (supra) applies where the vacancy occurs during the pendency of an election petition claiming relief under Sections 84 and 101 of the Act. In four of the five constituencies, the vacancy preceded the

13 *(2013) 4 SCC 465*
14 *(1982) 1 SCC 691*

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petition. In Karur, the vacancy admittedly arose 12 days after the petition, but the decision in *Sanjeevayya* (supra) is still inapplicable, for three reasons:

(a) The decision in *Sanjeevayya* (supra) arose in a two-candidate race where the runner-up, who had petitioned under Sections 84 and 101 of the Act, could directly have been declared elected and it was also noted that no time limit for bye-elections existed.

(b) In every one of the five constituencies, the contest was multi-cornered (Karur had 79 candidates), so that the election petitioner can never be declared elected under Section 101 of the Act, as the Supreme Court has consistently held in a catena of decisions, viz., *Vishwanatha Reddy* (supra); *Durai Muthuswami v. N. Nachiappan*[15]*; Thiru John* (supra); *D.K. Sharma* (supra)*; Muniraju Gowda* (supra)*; Prakash Khandre* (supra); and *Syeda Noor Fatima Zaidi v. Heena Urooz*[16].

15 *(1973) 2 SCC 45*
16 *2024 SCC OnLine SC 4104*

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(c) Even if the returned candidate's votes are deducted from the valid votes, in four of the five constituencies, no second-placed candidate has more than half of what remains, as per the following table:

Constituency	Valid votes polled	Valid votes after deducting returned candidate's votes	Half of the remainder	Best-placed rival
141 – Tiruchirappalli (East)	1,81,979	90,598	45,299	63,965
103 – Perundurai	1,99,874	1,29,572	64,786	60,609
225 – Ambasamudram	1,90,135	1,24,546	62,273	55,344
179 – Viralimalai	2,03,546	97,773	48,887	43,700
135 – Karur	2,16,290	1,44,748	72,374	69,721

THE SEVENTH RESPONDENT

11.1. Learned Senior Counsel appearing on behalf of the seventh respondent submitted that the seventh respondent, Dr.Subbaiya, had led by 10,245 votes in a five-candidate contest. He resigned on 26.05.2026, and the election petition was presented 20 days later.

11.2. He submitted that the present writ petition is a collateral attack on an election and is barred by Article 329(b) of the Constitution of India. The petitioner has no standing under the Act, and the rights to vote, to stand for election and to challenge an

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election are statutory. Mandamus lies to compel the performance of a duty. It cannot be issued to restrain a constitutional authority from acting, and as no notification had been issued when the writ petition was filed, the petition was speculative.

11.3. He submitted that the election petitioner (R12) is an elector and not a candidate. On a strict reading of the words "*he himself or any other candidate*" in Section 84 of the Act, and "*all the contesting candidates other than the petitioner*" in Section 82(a) of the Act, the declaration is open only to a candidate-petitioner. No defeated candidate has filed a petition or claimed the seat. The runner-up trailed by 10,245 votes, and the second and third candidates were only 1,733 votes apart, so it cannot be assumed that the winner's votes would go to any one of them. He relied on the decisions of the Supreme Court in *Vatal Nagaraj v. R.Dayanand Sagar*[17], wherein it was held that tainted votes must be quantified, besides the decisions in *Prakash Khandre* and *Muniraju Gowda* (supra).

17 *(1975) 4 SCC 127*

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11.4. It is also submitted that in view of the striking out of the prayer under Section 84 of the Act by the learned Single Judge, the interim order may be vacated and bye-election be directed to be notified in respect of Ambasamudram.

THE EIGHTH RESPONDENT:

12. Learned counsel for the 8th respondent submits that the 8th respondent is the election petitioner for Tiruchirappalli (East) and he does not dispute the petitioner's legal proposition. He submits that he has no objection to orders that protect the pending election petitions, and that he has applied in his own petition for an order restraining a bye-election. He alleges that the vacancies were "artificially created" by inducing MLAs to resign and join the ruling party.

THE ELEVENTH RESPONDENT::

13.1. Learned counsel for the 11th respondent, the election petitioner for Karur and a contesting candidate there, opposes the writ petition. It is submitted that the writ petition touches matters

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directly connected with the electoral process and with the pending ELP No.11 of 2026, which is governed by the self-contained scheme in Part VI of the Act. Relying on the decisions of the Supreme Court in *N.P.Ponnuswamiv. Returning Officer*[18], and *Mohinder Singh Gill v. Chief Election Commissioner*[19], it is contended that an election-related grievance must be raised only by an election petition. The petitioner is neither a candidate nor a party to the pending petition and cannot obtain a collateral or parallel adjudication through Article 226 of the Constitution of India. The remedies under Sections 81, 84, 86, 98, 100 and 101 of the Act constitue a complete mechanism, and entertaining this petition would run the risk of parallel proceedings, conflicting findings and prejudice to the statutory remedy he has invoked.

13.2. Learned counsel further submits that Article 324 of the Constitution of India vests superintendence, direction and control of elections in the Election Commission and Section 151-A of the Act supplies the framework for filling a casual vacancy. Relying on

18 *(1952) 1 SCC 94*
19 *(1978) 1 SCC 405*

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M.L.Ravi v. Chief Election Commissioner[20], he pleaded that mandamus cannot be used to dictate how a statutory discretion is to be exercised and Article 226 of the Constitution of India cannot impose a restriction that the statute does not impose.

13.3. It is further submitted that the position when *Sanjeevayya* (supra) was decided was materially different, because no time limit then existed and Parliament inserted Section 151-A by Act 21 of 1996. *Sanjeevayya* and *Telangana Rastra Samithi* (supra) must be understood in the context of petitions already pending that sought relief under Sections 84 and 101 of the Act, whereas the petitioner here is a stranger to the Election Petition. The pendency or later institution of an election petition cannot automatically suspend Section 151-A of the Act, and *Gudadhe* (supra) dealt with the express exception in clause (a) of the proviso to Section 151-A, relating to the proximity of the general election and cannot be extended to create an exception that Parliament did not enact. He added that the Court cannot create a "third exception" by implication.

20 *Order dated 21.03.2019 in W.P.No.8476 of 2019*

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13.4. Learned counsel also submitted that the fear of "two representatives" is hypothetical and premature. Parliament has provided separate and sequential mechanisms for conducting elections and for deciding election disputes, and Sections 86, 98 and 101 of the Act give effect to the final decision of an Election Court. Granting the relief would postpone the bye-election indefinitely and leave the constituency without a representative on the strength of a speculative contingency, contrary to the object of Section 151-A of the Act.

13.5. Learned counsel contends that whether a casual vacancy has arisen and whether the conditions for a bye-election are met are matters for the Commission to consider under Article 324 of the Constitution of India read with Section 151-A of the Act. The petitioner challenges no specific decision as illegal or beyond jurisdiction. The petition is also bound up with disputed questions about the election, the grounds of challenge and the rights of the candidates, which need pleadings, documentary and oral evidence and cross-examination before the Election Court.

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THE TWELFTH RESPONDENT:

14. Learned Senior Counsel appearing on behalf of the 12th respondent, the election petitioner for Ambasamudram, supports the petitioner. He submits that his petition was presented within the 45 days permitted by Section 81 of the Act; that the Act attaches no weight to the gap between the vacancy and the petition; and that the 7th respondent resigned to avoid disqualification under the Tenth Schedule to the Constitution of India after defying his party whip.

THE THIRTEENTH RESPONDENT:

15.1. Learned counsel for the 13th respondent submits that the petitioner has no locus standi and is neither a registered elector in nor a contestant from 103 – Perundurai, and was not a party to ELP No.43 of 2026. The right to elect, to be elected and to dispute an election are creatures of statute and not fundamental or common law rights and, therefore, a stranger cannot invoke Article 226 of

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the Constitution of India to obtain indirectly what only a candidate or elector could seek under Part VI of the Act.

15.2. It is further submitted that the very foundation of the writ petition has gone. By order dated 08.09.2026 in O.A.Nos. 829 and 830 of 2026, paragraphs 12 to 18 of ELP No.43 of 2026 were struck out and the election petition was dismissed. The 13th respondent resigned by letter dated 25.05.2026, the Speaker accepted the resignation under Rule 22 read with Rule 21 of the Assembly Rules, and the seat fell vacant under Article 190(3)(b) of the Constitution of India on 25.05.2026, as notified in Gazette Extraordinary No.259 of that date. No election petition was then pending, for ELP No. 43 of 2026 was presented only on 17.06.2026, 23 days later. Perundurai is, therefore, in the second category described in *Gudadhe* (supra), a clear vacancy under Section 151-A of the Act.

15.3. It is also submitted that the writ petition is barred by Article 329(b) of the Constitution of India, whose opening words "*Notwithstanding anything in this Constitution*" and wide expression

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"*no election*" do not allow a collateral challenge to be made by calling it a writ petition or a public interest litigation. He added that the relief is in substance prohibitory, in as much as it seeks to restrain a constitutional authority from exercising statutory powers which it has not yet exercised, and that mandamus cannot be used to control the manner of exercise of such a power.

16. Learned counsel appearing for the remaining respondents, who also addressed arguments before us, advanced substantially the same arguments as those recorded hereinabove, either by adopting them or by reiterating them in the context of the particular constituency concerned. Therefore, in order to avoid prolixity and needless repetition, the said arguments are not recorded again. We clarify, however, that the submissions of all the learned counsel, including those not separately noted, have been duly taken into consideration while arriving at the conclusions that follow.

17. We have bestowed our anxious consideration to the submissions advanced on both sides and have perused the

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documents on record and the various authoritative pronouncements on which reliance was placed.

ISSUES FOR DECISION

18. The pleadings and the arguments advanced give rise to the following questions for determination:

i. Is the writ petition maintainable? This covers the petitioner's standing, Article 329(b), the form of relief and the objection that mandamus cannot be granted, the joinder of five constituencies and the plea that a mere declaration is sought, the plea that the petition raises disputed questions of fact, and the charge of abuse of process.

ii. What do the decisions of the Supreme Court in *Sanjeevayya*, *Telangana Rastra Samithi* and *Gudadhe* (supra) lay down, how far are they binding in respect of the case on hand, and does Section 151-A of the Act change the position?

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iii. Is it of any consequence that in four constituencies the vacancy came before the election petition was presented?

iv. Can the Commission or this Court treat a claim under Section 84 of the Act as not pending merely because it seems unlikely to succeed in a multi-cornered contest?

v. Do the alleged defects in the election petitions, including the the objection under Section 82 of the Act, alter the position?

vi. Is the Commission's stand lawful, and should we instead direct it to hold the bye-elections?

vii. Is the apprehension of "two representatives" merely hypothetical, does the deferment amount to an indefinite postponement, and how is the public interest in representation to be protected?

viii. How do the remaining authorities cited by the parties bear on these questions?

ix. What should be done in each of the constituencies?

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DISCUSSION

A. MAINTAINABILITY:

19. On 10.07.2026, this Court took the view that the petitioner, a voter and an officer of the Court, has standing to raise a question regarding the proper working of the Act. We see no reason to change that view. The question is one of general importance. It concerns the manner in which a constitutional body must construe a statute, and it affects voters in five constituencies. The petitioner seeks no personal benefit for himself. It is true that he has not shown that he is a voter in any of the five constituencies, and the 6th and 13th respondents have rightly pointed this out. But the public interest jurisdiction of this court does not depend upon the petitioner's residence in the constituency. *Ayaaubkhan Noorkhan Pathan* and *Jyoti Basu* (supra) hold that a busybody with no legal interest cannot stop or interfere with an election, and that the right to dispute an election is statutory. Neither decision bars a citizen from invoking jurisdiction of the High Court to ascertain what the law requires of the Commission before it sets an election in motion. The petitioner does not seek to dispute any election, and no ulterior motive has been shown; nor has any

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material been placed before us to substantiate the allegation that he is acting at the instance of any election petitioner. In a matter raising a pure question of law concerning the duty of a constitutional authority, once the Court is satisfied that the question is of public importance and has been raised bona fide, the identity of the petitioner is of marginal relevance.

20. That apart, it is not unusual for such a question to be raised by a voter. The petitioner in *Gudadhe* (supra) was a voter who approached the High Court in public interest litigation under Article 226 of the Constitution of India against the Commission on the timing of a bye-election, and the Supreme Court decided his challenge on the merits. The writ petitioner in *Thomas Mates Gudinho v. Election Commission of India*[21], a decision the reasoning of which the Supreme Court has approved, was likewise a voter, and a Division Bench of the Karnataka High Court examined the Commission's decision to defer a bye-election on the merits.

21 *AIR 2002 Kar 232*

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21. The contesting respondents assert that no election petitioner has asked for a postponement and that the only interest served is that of the election petitioners. The first part of the assertion is factually incorrect, in as much as the 8th respondent has applied in his own petition for precisely that relief, and the 12th respondent supports the petition. As regards the second part of the assertion, the Commission's stand rests on the law and not on the identity of the person who sought it, and the fact that a correct reading of the law also protects the election petitioners' claims does not make the question any less one of public law. Nor does it matter that the petitioners in some of the earlier cases were candidates; no rule of law says that only a candidate may ask such a question. For the same reasons, the charge of abuse of process, which rests on the allegation that the petition is a proxy for the election petitioners, is not made out.

22. Article 329(b) of the Constitution of India provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition. *N.P. Ponnuswami* and *Mohinder Singh Gill*

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(supra) hold that the High Court cannot use Article 226 of the Constitution of India to interfere with the election process, or to attack an election, outside Part VI of the Act. The bar operates in respect of an election, an expression which takes in the entire process commencing with the notification calling the election and culminating in the declaration of the result. This petition does neither. It does not question the election of any member, and it does not question the resignations. It proceeds on the footing that each seat is vacant, and it asks whether a vacant seat can, in law, be filled yet. No bye-election has been notified, so there is no election process to interfere with. The question whether a vacancy is available for being filled under Sections 150 and 151-A of the Act is not one that can be raised in any election petition under Part VI of the Act. The Supreme Court has itself decided such questions on challenges to the Commission's decisions: *Telangana Rastra Samithi* (supra) arose from a High Court's ruling on the Commission's refusal to hold bye-elections, and *Gudadhe* (supra) from a petition against the Commission on the timing of a bye-election. If the said objection was well-founded, those cases could not have been

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decided as they were and, therefore, we hold that the objection fails.

23. Learned counsel for the 7th, 11th and 13th respondents contended that mandamus cannot be used to restrain the Commission or to dictate how it exercises a discretion, and the 11th respondent relied on the decision in *M.L.Ravi* (supra). However, the real thrust of the petitioner's prayer is for a declaration of the legal position and for a direction to the Commission to follow it. In our considered opinion, that is a proper use of the jurisdiction under Article 226 of the Constitution of India, which empowers this Court to issue directions, orders or writs, including declaratory relief, for the enforcement of the legal duties of public authorities. We are not dictating the manner in which a discretion is to be exercised. If, as the Commission says, the Supreme Court has already laid down that the Commission "*will have to wait*", there is no discretion left to dictate, and a direction to act in accordance with binding law is the classic office of mandamus. The Commission has, moreover, stated on affidavit that it does not propose to notify the bye-elections until the claims under Section 84 of the Act are decided; the cause of

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action is, therefore, real and not speculative. The argument that the petition was premature also falls away.

24. Leanred counsel for the 4th, 6th and 11th respondents pleaded that five separate causes of action are joined without leave, and that a mere declaration cannot be granted in a writ petition when a statutory remedy exists. The legal question is the same in all five constituencies, the relief claimed is a declaration with a consequential direction to one authority, and the Commission has dealt with the constituencies together. We have, however, examined each constituency on its own facts, as the contesting respondents themselves asked us to do. No prejudice has been shown. The rules relating to joinder of causes of action are rules of procedure, designed to prevent prejudice and multiplicity, and they cannot stand in the way of the exercise of the jurisdiction under Article 226 of the Constitution of India, where, as in the case at hand, no prejudice has been demonstrated. A declaration of the legal duty of a public authority, with a consequential direction, is a familiar form of writ relief, and Part VI of the Act offers the petitioner no remedy

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in respect of it and no election is called in question. The said objections do not merit consideration.

25. The facts on which the writ petition depends are the dates of the resignations, the dates of presentation of the election petitions and the prayers they contain. These are matters of record and are not seriously disputed. The respondents' dispute is as to whether a claim under Section 84 of the Act is likely to succeed, and, as we explain in Part D hereinbelow, we do not decide that question. The plea that the petitioner raises disputed questions of fact, therefore, fails.

B. WHAT THE SUPREME COURT HAS HELD

26. Article 190(3)(b) of the Constitution of India provides that when a member resigns by writing to the Speaker and the resignation is accepted, the seat "*shall thereupon become vacant*". Section 150 of the Act then directs the Commission, by notification, to call on the constituency to elect a person to fill the vacancy. Section 151-A of the Act prescribes a time limit. A bye-election

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"*shall be held*" within six months of the date of the occurrence of the vacancy, unless clause (a) or clause (b) of the proviso applies, that is to say, unless the remainder of the member's term is less than a year, or the Commission, in consultation with the Central Government, certifies that holding it within that period is difficult. Part VI of the Act deals separately with challenges to elections. Section 84 of the Act lets a petitioner ask not only for a declaration that the election is void, but also that he, or any other candidate, be declared duly elected. Sections 98(c) and 101 of the Act deal with how that relief is given. Section 8-A of the Act deals with disqualification following a finding of corrupt practice.

27. In *Sanjeevayya* (supra), the election petition claiming the composite relief was filed on 11.04.1962; the returned candidate resigned on 08.04.1964 and thereafter asked, by a writ petition, for a direction to the Commission to hold the bye-election. A Bench of two Judges held that Section 150 of the Act must be read with Section 84 of the Act and Part VI, and not alone. If a bye-election had to follow every resignation, a petitioner who later won a declaration in his favour would be confronted with a member

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elected at the bye-election, and "*an impossible situation would arise*". The Supreme Court held that a returned candidate cannot get rid of an election petition by resigning, "*whatever the reason for his resignation may be*". The Commission was, therefore, not bound to hold a bye-election forthwith and might suspend action until the result of the petition was known. If the petition failed, or the election was set aside without further relief, a bye-election would follow; if the election petitioner or some other candidate was declared elected, there would be no vacancy to be filled. The absence of a time limit in Section 150 of the Act was mentioned as a further circumstance supporting that view. The Court also drew support from the practice of the House of Commons recorded in May's *Parliamentary Practice,* where a vacancy occurs before or immediately after the first meeting of a new Parliament, the writ is not issued until the time for presenting election petitions has expired, nor if the seat is claimed on behalf of another candidate, and where the seat is claimed the writ is withheld until the trial of that claim or the withdrawal of the petition. Where only a void election was alleged and the seat was not claimed, a new writ was issued.

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28. Apropos the decision in *Telangana Rastra Samithi* (supra), it is to be noted that Section 151-A of the Act came into force on 01.08.1996, after the decision in *Sanjeevayya* (supra). Twelve members of the Andhra Pradesh Assembly resigned and the Speaker notified the vacancies. The Commission decided to hold bye-elections to ten of them, but not to the two constituencies in which election petitions claiming the seat were pending. A Division Bench of the High Court held that the new section, with its non obstante clause, made the decision in *Sanjeevayya* (supra) obsolete. The Supreme Court disagreed. It framed the question as whether a vacancy is to be taken to occur on the date of resignation, or from the date on which it becomes available for being filled up. It held that the non obstante clause covers only Sections 147, 149, 150 and 151 of the Act, and does not mention Sections 84, 98(c) or 101 of the Act; that Section 151-A of the Act did not nullify the ratio of *Sanjeevayya* (supra); and that any other reading would render Sections 84, 98(c), 101(b) and 8-A of the Act otiose, which Parliament could not have intended and would have said in the proviso if it had. It read *Sanjeevayya* (supra) as holding

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that the vacancy did not become available for being filled until a declaration was made or refused under the latter part of Section 84 of the Act, and held that the position remained the same after Section 151-A of the Act. It agreed that, to be filled in a bye-election, a vacancy must be available for being filled up. It observed that if the election of the resigning member is unchallenged there is no difficulty in harmonising Section 151-A of the Act with the rest of the Act, and that it is when an election petition is filed under Section 84 of the Act that the latter part of that section comes into play. Its conclusion, at paragraph 46, is the one on which this case turns. Although a casual vacancy may have occurred under Section 150 of the Act, those vacancies in which election petitions "*had been filed and were pending*" cannot be held to have become available for being filled within the time in Section 151-A of the Act. Article 190(3)(b) of the Constitution of India introduces no element of compulsion on the Commission to hold a bye-election ignoring Section 84 of the Act. In such cases the Commission "*will have to wait*" until a decision is rendered on the latter part of Section 84 of the Act, during the life of the House. The Court added that the

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proceeding under Section 84 of the Act must run its full course, in particular for the purposes of Section 8-A of the Act.

29. In the same decision, the Supreme Court clarified, by order dated 08.12.2020[22], that the bye-elections to the two constituencies, which had already been held on 27.07.2010 while the matter was pending, were not affected by its judgment. The said order deals with polls already held under a direction of the High Court that was being set aside. It does not decide when a vacancy is available, and we return to it in Part H hereinbelow.

30. In *Gudadhe* (supra), a Three-Judge Bench of the Supreme Court reiterated the proposition of law laid down in *Telangana Rastra Samithi* (supra). At paragraph 16, it recorded that the earlier case drew a distinction between two categories, viz., vacancies in which election petitions had been filed and were pending, which could not be treated as available merely because a resignation had been accepted; and other vacancies in which no such cases were filed and pending, which were clear vacancies for action under

22 *(2011) 1 SCC 387*

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Section 151-A of the Act. At paragraph 17 it noted that the view of the Karnataka High Court in *Thomas Mates Gudinho* (supra) had been approved in *Telangana Rastra Samithi* (supra). In the case before it no election petition was pending at all, so the vacancy had to be filled. The Court said that the period alone should be the governing factor, subject to the pendency of an election petition, because pendency is not controlled by the non obstante clause, and that the matter would be different when an election dispute is pending that comes within Section 84, 98(c) or 101(b) of the Act. It emphasised that that Parliament did not intend a constituency to remain unrepresented.

31. The decision of the Karnataka High Court in *Thomas Mates Gudinho* (supra) is of persuasive value only, but it was approved by the Supreme Court as stated above. It dealt with a seat that fell vacant by death while an election petition claiming the seat was pending. The Bench held that the Commission need not hold a bye-election forthwith, that the absence of a time limit in *Sanjeevayya* (supra) was only an additional aspect and not the main ground, and that the remedy for delay lay in requesting the Court seized of the

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election petition to dispose of it early. We bear that last observation in mind in making our directions.

32. From a plain reading of the aforesaid decisions, the following four propositions emerge, of which the parties do not seriously dispute the first three:

(i) Resignation does not end an election petition or the consequences of a finding of corrupt practice;

(ii) Section 151-A of the Act does not override Sections 84, 98(c), 101 and 8-A of the Act;

(iii) A vacancy that is subject to a pending claim under the latter part of Section 84 of the Act is not available to be filled, and the Commission must wait for that claim to be decided; and

(iv) Availability is a question that turns upon the state of things when the Commission is called upon to act. It is not a question that turns upon the date on which the seat fell vacant. The date of occurrence of the vacancy continues to govern the six-month period in Section 151-A of the Act, and the outer

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dates have been computed from it. It does not determine availability.

33. The question in *Telangana Rastra Samithi* was precisely whether Section 151-A of the Act, with its non obstante clause, displaced the rule in *Sanjeevayya* (supra), and the answer given at paragraphs 38, 41, 42 and 46 is the ratio of that decision. It was applied and approved by a Three-Judge Bench of the Supreme Court in *Gudadhe* (supra). Under Article 141 of the Constitution of India, the law declared by the Supreme Court is binding on all courts within the territory of India, and, under Article 144 of the Constitution of India, all authorities, civil and judicial, are required to act in aid of the Supreme Court. The ratio of the aforesaid decisions, therefore, binds this Court as well as the Election Commission. The 5th and 6th respondents plead that these decisions must be read with the later three-Judge Bench decision in *Muniraju Gowda* (supra). We agree that they must be read together, and we do so in Part D; *Muniraju Gowda* (supra) did not concern the filling of a vacancy, did not refer to Section 151-A of the Act, and has not been shown to doubt any of the above.

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34. The 4th respondent pleads that *Sanjeevayya* (supra) came before Section 151-A of the Act and that Section 151-A of the Act, being later, prevails. The 11th respondent, similarly, pleaded that we cannot create a "*third exception*" to Section 151-A of the Act. That argument was advanced in *Telangana Rastra Samithi* and was rejected and it cannot be accepted afresh. We are not creating an exception to Section 151-A of the Act. We are applying the decision of the Supreme Court which held that Section 151-A of the Act does not touch Sections 84, 98(c) and 101 of the Act, so that a vacancy in respect of which a claim under Section 84 of the Act is pending is not one to which the six-month rule applies. For the same reason, the argument of a *casus omissus*, a gap that only Parliament can fill, fails. The further argument of the 5th respondent that Parliament fixed the six-month period with the Section 84 prayer in mind, and left out any exception for pending petitions, is in substance the argument that was rejected in the same case, where the Court treated the omission to mention Sections 84, 98(c) and 101 of the Act in the non obstante clause as decisive.

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C. WHETHER IT IS MATERIAL THAT THE VACANCY PRECEDED THE PETITION:

35. The principal argument of the contesting respondents is that in four constituencies the seat fell vacant before any election petition was presented. It is contended that the character of a vacancy is fixed at the time when it arises. On that view, a vacancy arising with no petition pending is a clear vacancy, and a petition filed later cannot undo that. They further contend that the law has no concept of "*retrospective pendency*". The petitioner and the Election Commission contend that the test is whether the claim under Section 84 of the Act is pending at the time when the vacancy falls to be filled. We have considered both views with care. We are of the considered opinion that the view of the Commission is correct, for the following reasons.

36. In *Telangana Rastra Samithi* (supra), the Supreme Court posed the question whether a vacancy is one that occurs on the date of resignation, or one that becomes available for being filled up. It answered that a vacancy must be available to be filled, and that a vacancy under a pending Section 84 claim is not. Availability

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and occurrence are, therefore, distinct concepts. The Commission in that case decided not to notify two constituencies "*on account of the fact that election petitions were pending*", that is, it looked at the position as it stood when it came to act, and the Supreme Court approved that approach. The Supreme Court also said that it is "*only when an election petition is filed*" that the latter part of Section 84 comes into play. The operative words of the said decision describe vacancies in which petitions "*had been filed and were pending*". The decision in *Gudadhe* (supra) speaks in the present tense of vacancies in which petitions "*are pending*", and it ends by saying that the matter would be different "*when an election dispute is pending*". None of these passages makes the date of vacancy the cut-off. The contensting respondents, in effect, invite us to read into the said decisions words which are not there.

37. The rationale of the rule is a risk of two claimants for one seat, and the principle that a returned candidate must not escape the election petition or Section 8-A of the Act by resigning. *Muniraju Gowda* (supra) repeats that involvement in a corrupt practice is not washed away by a later resignation. That risk is identical whether

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the resignation comes the day before the petition or the day after. Suppose a member resigns on the tenth day after the result, and a petition claiming the seat is filed on the fortieth day. On the respondents' reading, the seat would be free to be filled, a bye-election may be notified and completed while the petition is yet within time, and if the election petitioner were then to obtain a declaration in his own favour, the "*impossible situation*" described in *Sanjeevayya* (supra) would have arrived. Two returned candidates, equally accused, would be treated differently only because one resigned a few days earlier. Such a rule would place a premium on early resignation. It is in direct conflict with what the decision in *Sanjeevayya* (supra) forbids, because the resignation would defeat the petition "*whatever the reason*". The principle in that case does not depend on the order of events or on the member's motive.

38. Section 81(1) of the Act gives every candidate and elector 45 days to present a petition. Parliament has therefore said that, for 45 days after the result, the election remains open to challenge, including a challenge that claims the seat for someone else. A resignation tendered inside that window necessarily comes before

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any petition filed late in it. If the respondents were right, a returned candidate who faces a serious claim could defeat Sections 84, 98(c) and 101 of the Act just by resigning early. The Supreme Court has said that this result would make those sections otiose. We note too that *Sanjeevayya* (supra) drew support from the practice recorded in May's *Parliamentary Practice*: where a vacancy occurs before or just after a new Parliament meets, no writ issues until the time for presenting petitions has expired, and none issues if the seat is claimed for another candidate. That practice cuts against the respondents. It treats the end of the period for petitions as the time to look at whether the seat is claimed.

39. Section 151-A of the Act allows six months; the Commission has no duty to act on the first day. None of the five constituencies was notified within the 45-day window, and when the Commission came to decide, every petition in issue had been presented. It was entitled to look at the position as it then stood. In doing so it did not treat any petition as pending from an earlier date. It treated each petition as pending on the day it had to decide, which is a matter of record. The charge of "retrospective

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pendency", which the 5th respondent presses with reference to Sections 80, 80-A and 81 of the Act, is therefore misplaced. We do not hold that an election petition is deemed to have been pending on any earlier date. We hold only that, when the Commission is called on to act, a pending claim under Section 84 stands in the way of the filling of the vacancy.

40. The 4th respondent stresses that in *Sanjeevayya* (supra) the petition had been pending for nearly two years, that there were only two candidates, and that no time limit then existed. The 5th respondent adds that *Sanjeevayya* (supra) held only that the Commission was "*not bound*" to proceed. The point regarding the time limit was answered in *Telangana Rastra Samithi* (supra), which read *Sanjeevayya* (supra) as a decision about availability of the vacancy, and by the Karnataka Bench, whose reasoning the Supreme Court approved, that the time limit was only an additional aspect. The number of candidates in *Sanjeevayya* (supra) is a matter of fact and does not touch the reasoning; the multi-candidate argument is dealt with in Part D. As to the sequence of events, we accept that the report of *Telangana Rastra Samithi*

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(supra) does not disclose the dates on which the petitions there were presented in relation to the resignations, and that the question of sequence was neither raised nor decided. In *Gudadhe* (supra), no election petition had been filed at all. A decision is an authority for what it decides, and these decisions do not decide the question of sequence one way or the other. The question of sequence, being an open one, falls to be answered on principle and on the language and rationale of the decisions, as discussed above.

41. The argument that the seat becomes vacant "thereupon", and that Rule 21 of the Assembly Rules calls for steps to fill it, does not carry the resondents as far as it is claimed. The Supreme Court has held that Article 190(3)(b) of the Constitution of India introduces no element of compulsion on the Commission to hold a bye-election ignoring Section 84 of the Act. The Rules, being subordinate to the Constitution of India and the Act, cannot enlarge what the Constitution provides. Nor does our view undo the vacancy. The seat is vacant, and has been since the date of acceptance of the resignation, as the Gazette notifications show. The only question is whether it is available to be filled now.

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42. *Muniraju Gowda* (supra) is a decision on pleadings and on Section 101 of the Act. It did not concern the filling of a vacancy, and nothing in it doubts the rule in *Sanjeevayya* and *Telangana Rastra Samithi* (supra). We read it with them in Part D.

43. The aforesaid question does not arise in the Karur constituency, where the election petition was presented on 17.06.2026 and the resignation followed on 29.06.2026. It falls squarely within *Sanjeevayya* and *Telangana Rastra Samithi* (supra), and the 6th respondent does not say otherwise. He rests on a different argument, to which we now turn.

D. THE CONTENTION RELATING TO MULTI-CANDIDATE CONTESTS:

44. The respondents next contended that a claim under Section 84 of the Act cannot be won in these contests, which had between 5 and 79 candidates. They rely on the rule that votes cast for a returned candidate can be treated as thrown away, and the next candidate declared elected, only where two candidates contest.

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The rule comes from *Vishwanatha Reddy* (supra), a decision of a Constitution Bench, and was applied or explained in *Thiru John*, *D.K. Sharma*, *Prakash Khandre* and *Muniraju Gowda* (supra), and in the later decisions cited by the 6th respondent. It is contended that the Commission never considered these cases and that, on their strength, there is no genuine competing claim in any of these constituencies. They added that Section 84 of the Act only names the relief, while Section 101 of the Act controls it, and that a prayer cannot create an entitlement.

45. We accept the general proposition that Section 84 of the Act does not by itself confer upon the election petitioner a title to the seat, and that declaring an election void does not by itself entitle the election petitioner or anyone else to be declared elected. At this juncture, it is apposite to refer to Section 101 of the Act, which has two limbs. Under clause (a), the election petitioner or another candidate must in fact have received a majority of the valid votes. Under clause (b), the election petitioner or such other candidate must show that, but for the votes obtained by the

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returned candidate by corrupt practices, he would have obtained a majority of the valid votes.

46. In *Vishwanatha Reddy* (supra), the returned candidate was statutorily disqualified at nomination. The Constitution Bench held that, with only two candidates in the field, the votes for him could be treated as thrown away. It added that the same could not be said where there are more than two candidates, because the question of notice to the voters may then assume significance. It also pointed out that under clause (b) the Act requires proof of corrupt practice and of votes obtained by it.

47. *Thiru John* (supra) was a case of disqualification in an election by single transferable vote, where it was impossible to say how the votes would have been distributed.

48. *D.K. Sharma* (supra) was decided after a full trial in which the petitioner had led evidence of notice to the voters and failed.

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49. *Prakash Khandre (supra)* concerned a disqualification under Section 9-A in a five-candidate contest. The said decision itself recognised that clause (a) depends on an error in counting and that clause (b) can support a declaration in favour of the petitioner or another candidate where it is established that the returned candidate obtained more than the margin by corrupt practices. What it held against the petitioner was that, in a case of initial disqualification with more than two candidates, the Act provides no basis for treating all the returned candidate's votes as wasted.

50. *Muniraju Gowda* (supra) was decided on two grounds: first, that the petition and the amendment pleaded no material facts for clause (a) or (b) of Section 101 of the Act, and the amendment came after limitation; and second, that in a contest of fourteen candidates the rule could not in law be applied. Both grounds were applied by the Election Court on an application to strike out the prayer, on the full pleadings.

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51. In *Gadakh Yashwantrao Kankarrao (supra),* and *Jamuna Prasad Mukhariya (supra),* relief under Section 101(b) of the Act was refused at the end of the trial because there was no evidence to show that the rival candidate would have obtained a majority of the valid votes but for the corrupt practice. Those cases show that clause (b) is decided on the pleadings and the evidence, and that a bare finding that the election is void is not enough.

52. Whether a claim under Section 84 of the Act can succeed is a question falling under Sections 100 and 101 of the Act, and it is to be decided by the Election Court in the election petition. That is the plain effect of Article 329(b) and Part VI of the Act. Every decision cited was rendered by an Election Court either at the stage of pleadings or after trial, or by the Supreme Court in an appeal from it. *Muniraju Gowda* (supra) itself shows how it is done: the question was raised in the election petition and decided there, on an application to strike out the prayer. The Commission rightly says that it has no power to adjudicate on it. If the Commission decided to hold a bye-election because it believed that the prayer under Section 84 of the Act was bound to fail, it would in substance be

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adjudicating that prayer and the result would be the very situation the Supreme Court warned against. This court would be doing the same if we decide the matter in a writ petition.

53. The 6th respondent's tables show that, if the returned candidate's votes are removed, no runner-up in four of the five constituencies commands half of what is left. The tables rest on the very premise that is in dispute, namely that votes can be notionally redistributed, and the Supreme Court has said that this is permissible only in narrow circumstances. Even on the tables, the runner-up at Tiruchirappalli (East) polled 63,965 against a half-share of 45,299, so the tables do not support the same conclusion in all five. The arguments that the Karur petition does not quantify votes obtained by corrupt practice, and that the 159 postal ballots would not bring the election petitioner level, are arguments about the sufficiency of the pleadings and the proof under Section 101 of the Act. They are precisely what an application under Order VI Rule 16 or Order VII Rule 11 of the Code of Civil Procedure, 1908, as applied by Section 87 of the Act, is meant to decide. We do not decide them here.

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54. The respondents are not without a remedy, and they have twice used it. The 13th respondent applied to strike out the Section 84 prayer and to reject the petition, and on 08.09.2026, less than three months after presentation, the Election Court struck out the pleadings and dismissed ELP No. 43 of 2026. The Commission now accepts that the Perundurai vacancy is available. The 7th respondent made similar applications in the Ambasamudram petition, ELP No. 2 of 2026, which was presented on 15.06.2026. On 01.10.2026, within four months of presentation, the Election Court struck out the Section 84 prayer in that petition, although it declined to reject the petition itself. This demonstrates that a Section 84 prayer that cannot stand does not keep a seat frozen for long, provided it is tested promptly.

55. Until a claim under Section 84 of the Act has been struck out, rejected, withdrawn, abandoned or decided, it is a claim pending before the Election Court, and the rule in *Telangana Rastra Samithi* (supra) applies to it. The deferral is not the Commission's view of the merits. It follows from the existence of a claim that only

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the Election Court can dispose of. We do not say that the claims will succeed. We say that neither the Commission nor this Court is entitled, on this record, to hold that they have already failed.

56. In reaching this view we have not overlooked the genuine concern the respondents raise, which is that several lakhs of voters in each of these constituencies are without an elected representative. The Supreme Court has said that Parliament did not mean any constituency to be left unrepresented. We share the concern, but the Supreme Court has held that Section 84 of the Act must be allowed to run its course. The answer, therefore, lies in shortening the process and not in curtailing it. We deal with this in the paragraphs that follow.

E. THE ALLEGED DEFECTS IN THE ELECTION PETITIONS:

57. Learned Senior Counsel for the 4th respondent argued that the petition against him is not maintainable under Section 82 of the Act, because he had ceased to be the returned candidate when it was presented. The 7th respondent contends that the

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Ambasamudram petition is fatally defective, pointing to a booth number that does not exist, manifesto promises, unpleaded agency in criminal cases, and Registry defects in the Form 25 affidavit. The 5th, 6th, 11th and 13th respondents advance similar contentions in their own way, with reference to the want of material facts under Sections 83 and 101 of the Act.

58. These are objections to the election petitions. They have to be decided by the Election Court on applications under Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure, 1908, as applied by Section 87 of the Act. Some of those applications have already been decided. The Perundurai petition was dismissed on such an application on 08.09.2026. At Ambasamudram, the Election Court declined on 01.10.2026 to reject the petition on the 7th respondent's application, although it struck out the Section 84 prayer. The remaining objections are for the Election Court. If we express our own view on these objections in a writ petition, we would be pre-judging the election petitions and that too without the full record. We decline to do so. We observe only that the Supreme Court has held that a resignation does not by itself end an election

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petition or its consequences under Section 8-A of the Act. Whether a petition presented after a resignation is properly constituted is for the Election Court. We also cannot accept that a petition with Registry defects is to be treated as if it did not exist. A petition that has been presented and numbered is before the Court until it is rejected or otherwise disposed of. But we are conscious that defects left uncured, and applications left unheard, are precisely what can turn a short deferral into a long one.

F. THE DECISION OF THE ELECTION COMMISSION:

59. The Commission's stand is that it will wait until the Section 84 claim in each constituency is decided. The respondents advance two criticisms. They contend that the stand rests on a misreading of the law, and that, at best, the Commission had a choice and made the wrong one. The 4th respondent himself accepts that the Commission has the autonomy to defer a bye-election in an appropriate case.

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60. We hold that the Commission's decision is in accordance with law. The words in *Telangana Rastra Samithi* (supra), that the Commission "*will have to wait*", leave no room for choice. Even if *Sanjeevayya* (supra) only left it open to the Commission to wait, the decision to wait was one the Commission was entitled to take, and it is not unreasonable. The Commission has not relied on the Clause (b) of the proviso to Section 151-A of the Act or on Article 324 of the Constitution of India. We agree with the 5th respondent that paragraph 8 of the counter is not a certificate under that clause, and that Article 324 of the Constitution of India cannot be used to create an exception that Parliament has not enacted. But the paragraph does not purport to be either. It records the Commission's decision to comply with the Supreme Court's rulings. No certificate was needed, because the rule in *Telangana Rastra Samithi* (supra) operates before the proviso comes into play. CLause (a) of the proviso (remainder of term less than one year) has no application, since the Assembly was constituted in May 2026, and the remainder of its term exceeds one year on every date of vacancy in question.

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61. The 11th respondent says that the writ petition invites judicial micro-management of a constitutional body. We are unable to agree. We have not substituted our own view on a matter of administrative policy for that of the Commission, and we have not told it how to exercise any discretion. We have examined whether the stand it has taken is in accordance with the law declared by the Supreme Court, which is a question of legality and falls within the scope of judicial review.

62. The contention that the Commission did not consider *Vishwanatha Reddy*, *Muniraju Gowda* (supra) and the other cases is answered by what we have said in Part D. The Commission has no jurisdiction to decide whether the claim under Section 84 of the Act will fail. It was, therefore, right not attempting to do so. The 5th respondent points out that the Commission's counter admits that the particulars and prayers of the election petitions were obtained from the High Court website, and does not show that it studied the complete petitions. It would have been preferable had the Commission examined the pleadings. But the Commission's decision

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does not depend on the merits of any pleading. It depends on one fact, namely that a prayer under Section 84 has been made in a petition that is pending, and that fact is not in dispute, subject to the verification noted in Part I in respect of Viralimalai and Karur. The Commission's failure to file a paragraph-wise reply to the writ affidavit is likewise of no consequence, because the question is one of law that has been fully argued by counsel for the Commission, and no party has been prejudiced. A concession by a party cannot alter the law, and we have decided the case on the law and not on what the Commission has or has not conceded.

63. The contention that the Commission applied *Sanjeevayya* (supra) "mechanically and uniformly" to all five constituencies is not borne out by record either. The Commission's own written submissions deal with each constituency, and, as the Perundurai petition has now been dismissed, it has asked that Perundurai be treated differently. We too do so. On the same footing, we treat Ambasamudram differently from the other three constituencies, because the prayer for a declaration in favour of the runner-up has been struck out there.

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64. The contesting respondents seek a direction to the Commission to hold the bye-elections, relying on the power of the Court to mould relief in *M.S. Sanjay v. Indian Bank*[23] and *Shiv Shankar Dal Mills v. State of Haryana*[24]. The 5th and 6th respondents add that this Court may direct a bye-election in the larger public interest under Article 226 of the Constitution of India. We accept that this Court has power to mould relief in the public interest. But the moulding of relief does not extend ordering what the Supreme Court has said the law does not allow. We cannot direct the Commission to treat as available a vacancy that, on the Supreme Court's reading of the Act, is not available. The said prayer is, therefore, declined. We exercise the power to mould relief in a different manner, namely, by ensuring that the deferral is of short duration and lasts no longer than the claim under Section 84 of the Act does.

65. The respondents say that Section 151-A of the Act is a clear time limit, and that the Commission will be in breach of it on

23 *2025 SCC OnLine SC 368*
24 *(1980) 2 SCC 437*

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09.11.2026 for Tiruchirappalli (East), and on later dates in respect of the rest. The decision of the Supreme Court in *Telangana Rastra Samithi* (supra) answers this. The Supreme Court held that such vacancies are not available for being filled within the time prescribed by Section 151-A of the Act, and that is the effect of the non obstante clause not touching Section 84 of the Act. The Karnataka Bench, whose view was approved, put it as Section 151-A of the Act having "no application" where such a petition is pending. If the Commission does not notify by the outer dates in these three constituencies, it will not be in breach of Section 151-A of the Act. At Perundurai and Ambasamudram, where no Section 84 claim is pending, the six-month period in Section 151-A continues to apply, and the outer dates are 24.11.2026 and 25.11.2026 respectively. However, the Commission has been restrained, by the interim order of this Court dated 10.07.2026, from notifying bye-elections in all the five constituencies. The Commission cannot be faulted for abiding by an order of this Court, and the period during which the said interim order operated shall be excluded in computing the time under Section 151-A of the Act in respect of Perundurai and Ambasamudram. It shall also be open to the

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Commission, in respect of these two constituencies, to take recourse to clause (b) of the proviso to Section 151-A of the Act, in accordance with law, should it consider that to be necessary.

G. TWO REPRESENTATIVES, INDEFINITE POSTPONEMENT AND THE PUBLIC INTEREST:

66. The 5th and 11th respondents say that the risk of two persons claiming one seat is hypothetical and premature. We do not agree. In *Sanjeevayya* (supra), the Supreme Court treated that risk as the very reason why a bye-election should not run ahead of a claim under Section 84 of the Act, and in *Telangana Rastra Samithi* (supra), the Supreme Court reiterated the said proposition. The respondents' answer is that the claim under Section 84 of the Act is bound to fail. In other words, the respondents contend that the risk does not arise if the claims fail. We cannot proceed on such assumption for the reasons given in Part D. The two proceedings, as the 5th respondent says, operate in distinct fields. If the challenge to the earlier election fails, the bye-election is unaffected. But if a claim under Section 84 of the Act succeeds after a bye-election has been held, the field is not distinct, and the "*impossible situation*"

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arises. Parliament has indeed provided separate and sequential mechanisms, but the Supreme Court has held that the sequence must respect Section 84 of the Act, not run ahead of it.

67. The 5th and 11th respondents also say that the relief will postpone the bye-elections indefinitely. We do not grant the petitioner an open-ended embargo. The prayer asks for deferment for so long as the election petitions remain pending. We decline that part of the prayer. The deferral we uphold lasts only until the claim under Section 84 of the Act in the particular constituency is decided, whether by judgment, by striking out of the prayer, by rejection of the petition, or by withdrawal or abandonment of the claim in accordance with the Act. If the election petition continues on other grounds after the claim under Section 84 of the Act has gone, the vacancy becomes available, because the rule in *Telangana Rastra Samithi* (supra) attaches to the latter part of Section 84 of the Act and not to the petition as a whole. We have also noted that the Supreme Court spoke of the wait lasting until that decision is rendered during the life of the House. We have not extended the deferral through appeals, and the Commission is not

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required to wait for an appeal unless the operation of the order is stayed by the Supreme Court.

68. The respondents are right that a Member of the Legislative Assembly serves the people, and that the post is not a private benefit. They are right that voters in each constituency have a real interest in having a representative. *Afjal Ansari* (supra) and *Rahul Gandhi* (supra), were cited for the weight of that interest. Both were decided on applications for the suspension or stay of a conviction under Section 389 of the Code of Criminal Procedure, 1973 where Section 8 of the Act was in play, and neither dealt with Section 84 of the Act, Section 151-A of the Act or the availability of a vacancy. In *Afjal Ansari* (supra), the Supreme Court noted, in that setting, that the vacancy created is to be filled "in the manner authorised by law", which is consistent with what we hold; and in *Rahul Gandhi* (supra), the Supreme Court expressly declined to say anything on the merits. We accept the 5th respondent's description of the work of an MLA in the House, in the committees and in the constituency, and we take that interest seriously. We also note the figures he gives for the MLA Constituency Development Scheme.

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But the 5th respondent himself accepts that the funds are non-lapsable during the tenure of the same Assembly, that works already recommended and sanctioned may be completed, and that the unproposed amount passes to the successor. The Assembly has a five-year term, and a deferral of the kind we direct, which we have sought to keep short, is not likely to cause the loss of these funds. The loss of an elected channel at the local-body level is a regrettable feature of the present situation, but it has no bearing on what Sections 151-A and 84 of the Act require.

69. It is also true that the electors of a constituency have an interest in knowing that the person who represents them is the person lawfully entitled to the seat. Parliament and the Supreme Court have settled how these two interests are to be reconciled where a claim under Section 84 of the Act is pending. The Supreme Court said that the Commission must wait. We respectfully follow that. Our task is to see that the wait is as short as the law allows.

70. We are conscious that a pleaded prayer under Section 84 of the Act, if left untested, could be misused to hold up a bye-

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election, even where the prayer has no real prospect of success. This is why we have placed weight on the Election Court's power to strike out a prayer that cannot stand. The respondents have a fast and effective remedy, as the Perundurai and Ambasamudram cases show.

H. THE OTHER AUTHORITIES CITED, AND WHY THEY DO NOT ALTER THE RESULT

71. The parties cited many decisions, some of which are not specifically noticed in the summary of submissions. Those that decide the question before us are *Sanjeevayya*, *Telangana Rastra Samithi* and *Gudadhe* (supra), with the approved view in *Thomas Mates Gudinho* (supra). The others are noticed below, with the reason each does not alter the conclusion.

Authority	Cited by	What it decides	Why it does not displace the result
Election Commission of India v. Telangana Rastra Samithi, (2011) 1 SCC 387 (order of 08.12.2010)	R4	Bye-elections already held on 27.07.2010 were not disturbed by the judgment reported at (2011) 1 SCC 370.	It is a clarificatory order on polls already held under a High Court direction later set aside. It does not hold that a vacancy under a pending Section 84 claim may be filled, and no bye-election has been held in any of the five constituencies here.

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Authority	Cited by	What it decides	Why it does not displace the result
Vishwanatha Reddy v. Konappa Rudrappa Nadgouda, AIR 1969 SC 604 (Constitution Bench)	R4, R5, R6, R7, R13	In a two-candidate contest, votes for a candidate disqualified at nomination are thrown away; with more candidates, notice to voters may matter; clause (b) of Section 101 needs proof of corrupt practice and of votes so obtained.	It concerns the final relief after trial, not the filing or pendency of the claim. It does not say that a Section 84 claim in a multi-candidate contest cannot be pleaded or that the Commission may treat it as non-existent.
Konappa Rudrappa Nadgouda v. Vishwanath Reddy, AIR 1969 SC 447	R4	The original decision on disqualification under Section 9-A (government contracts), later restored in the review.	It does not touch Section 151-A, Section 84 as to vacancies, or availability of a vacancy.
Thiru John v. Returning Officer, (1977) 3 SCC 540	R4, R5, R6	In a Rajya Sabha election by the single transferable vote, votes for a disqualified candidate cannot be treated as thrown away.	It turns on the voting system and a disqualification case, and was decided after trial. It confirms that notice and voting patterns are fact questions.
D.K. Sharma v. Ram Sharan Yadav, 1993 Supp (2) SCC 117	R4, R5, R6	The Election Court declined to treat votes as thrown away because the petitioner failed to prove notice to voters.	Decided after full evidence. It shows that the question is one for trial.
Prakash Khandre v. Dr. Vijay Kumar Khandre, (2002) 5 SCC 568	R4, R5, R6, R7	In a five-candidate contest, initial disqualification does not entitle the next candidate to the seat; votes are not presumed thrown away.	It expressly recognises relief under Section 101(a) and 101(b) in a multi-candidate contest on proof. It is a decision on final relief, and it supports leaving the question to the Election Court.
Muniraju Gowda P.M. v. Munirathna, (2020) 10 SCC 192 (three Judges)	R4, R5, R6, R7	The Election Court rightly struck out the prayer for a declaration because no material facts were pleaded and fourteen candidates contested; resignation does not wash away corrupt practice.	The prayer was struck out by the Election Court on an application. It shows the remedy. It did not deal with Section 151-A or the filling of a vacancy.
Gadakh Yashwantrao Kankarrao v. Balasaheb Vikhe Patil, (1994) 1 SCC 682	R4	Section 101(b) relief was set aside after trial for want of evidence.	Final relief on evidence; no question of vacancy or Section 151-A.
Jamuna Prasad Mukhariya v. Lachhi Ram, (1954) 2 SCC 306	R4	Section 101(b) relief was refused as speculative on the evidence.	Same.

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Authority	Cited by	What it decides	Why it does not displace the result
Afjal Ansari v. State of U.P., (2024) 2 SCC 187, and Rahul Gandhi v. Purnesh Ishwarbhai Modi, (2024) 2 SCC 595	R4	Stay or suspension of conviction; weight of the electorate's interest in representation.	Different statutory setting (Section 8). They do not address Section 84 or Section 151-A. We have taken the interest in representation into account in Part G.
Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly, (2020) 2 SCC 595 (three Judges)	R12 (allegation of resignation to avoid disqualification)	Tenth Schedule disqualification; Speaker's powers; a pending disqualification does not become infructuous by resignation where the disqualifying act came first.	Nothing in it concerns Section 151-A or Section 84. We make no finding on the reasons for any resignation.
N.P. Ponnuswami, (1952) 1 SCC 94; Mohinder Singh Gill, (1978) 1 SCC 405	R11	Article 329(b) bars challenges to the election process outside an election petition.	No election is called in question and no election process has begun (Part A).
Ayaaubkhan Noorkhan Pathan, (2013) 4 SCC 465; Jyoti Basu, (1982) 1 SCC 691	R6, R13	A busybody cannot disturb an election; the right to dispute an election is statutory.	The petitioner disputes no election and has no ulterior motive (Part A).
NBCC (India) Ltd., 2025 INSC 54; M.L. Ravi, W.P. No. 8476 of 2019 (Mad); M.S. Sanjay, 2025 SCC OnLine SC 368; Shiv Shankar Dal Mills, (1980) 2 SCC 437	R11, R4	General principles on precedent, mandamus and moulding of relief.	Addressed in Parts A, B and F. They do not enable this Court to order a bye-election to a vacancy that the Supreme Court has held is not available.
Durai Muthuswami, (1973) 2 SCC 45; Vatal Nagaraj, (1975) 4 SCC 127; S. Subramaniam Balaji, (2013) 9 SCC 659; Syeda Noor Fatima Zaidi, 2024 SCC OnLine SC 4104	R6, R7	Propositions on Section 101, quantification of tainted votes, election promises, and the multi-candidate rule.	Each goes to the merits of a Section 101 claim or the sufficiency of pleadings, which are for the Election Court (Parts D and E).

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I. THE POSITION IN EACH CONSTITUENCY

72. Tiruchirappalli (East) Constituency: ELP No.53 of 2026 was presented within time and asks for a declaration in favour of the election petitioner. The 8th respondent has applied for an order against a bye-election. A claim under Section 84 of the Act is pending. The vacancy is not available to be filled until that claim is decided, struck out, rejected, abandoned or withdrawn. The 4th respondent is at liberty to apply for an early decision on whether the prayer can stand. His request that the interim order be vacated for this constituency, and that a bye-election be directed, is refused.

73. Ambasamudram Constituency: ELP No.2 of 2026 was presented within time by an elector, the 12th respondent. As presented, it claimed a declaration under Sections 84 and 101 of the Act in favour of the second respondent there, the runner-up, V.P. Durai, "*or such other candidate as is found entitled*". The 7th respondent applied to strike out that prayer (O.A. No. 839 of 2026) and to reject the petition (O.A. No. 866 of 2026). By order dated 01.10.2026, the Election Court declined to reject the petition, so

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that it continues, but struck out the prayer that the runner-up be declared duly elected. We proceed on the footing that the said order has disposed of the entire prayer for a declaration under the latter part of Section 84 of the Act, including the words "or such other candidate as is found entitled", the Commission having stated that no claim under Section 84 is now pending in this petition. If, on a perusal of the certified copy of the order, it is found that any part of that prayer survives, the Commission or any affected party may apply to this Court for appropriate directions, and we grant liberty accordingly. No claim under the latter part of Section 84 of the Act is now pending in ELP No.2 of 2026, and that was the only reason for the Commission to wait. The petition continues on the question whether the election is void, but, as we have explained in Part G, the rule in *Telangana Rastra Samithi* attaches to the latter part of Section 84 of the Act and not to the petition as a whole. The vacancy is therefore available. In view of this conclusion, it is unnecessary to decide the 7th respondent's contention that a declaration under the latter part of Section 84 of the Act is open only to a candidate-petitioner, and that question is left open. We vacate the interim order for Ambasamudram. The Commission may

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proceed in accordance with law, subject to any appeal that may be pending or may lie against the order of 01.10.2026 and to any order, including any interim order, that the Supreme Court may make in it. The Commission will take account of the position at the time it acts. The outer date under Section 151-A of the Act is 25.11.2026, subject to the exclusion of the period of operation of the interim order, as stated in Part F. ELP No. 2 of 2026 will continue before the Election Court in accordance with law, and nothing in this judgment touches its merits.

74. Viralimalai Constituency: ELP No.10 of 2026 carries the claim under Section 84 of the Act and is pending. The point that the election petitioner came third, and that the runner-up did not petition, will be for the Election Court to consider. In such view of the matter, we hold that the vacancy at 179 – Viralimalai is not available for being filled up.

75. Karur Constituency: ELP No.11 of 2026 was presented before the resignation, and the case is the clearest of the five on the question of sequence. The records show that prayer under

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Section 84 of the Act is pending. In such view of the matter, we hold that the vacancy at 135 – Karur is not available for being filled up.

76. Perundurai Constituency: By its order dated 08.09.2026 in O.A.Nos.829 and 830 of 2026, the Election Court struck out the pleadings under Section 84 of the Act and dismissed ELP No. 43 of 2026. No claim under Section 84 of the Act is now pending, and that was the sole reason for the Commission to wait. The legal obstacle to a bye-election has therefore gone, and the vacancy is available. The Commission itself says so. We therefore vacate the interim order for Perundurai. The Commission may proceed in accordance with law, subject to any appeal that may be pending or may lie against the order of 08.09.2026 and to any order, including any interim order, that the Supreme Court may make in it. None of the parties has told us that such an appeal is pending, and the Commission will take account of the position at the time it acts. The outer date under Section 151-A is 24.11.2026, subject to the exclusion of the period of operation of the interim order, as stated in Part F.

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J. DIRECTIONS AND ORDER:

For the reasons given above, we pass the following order and issue the following directions:

(a) The writ petition is partly allowed to the extent indicated hereunder.

(b) We declare that, for so long as a claim for a declaration under the latter part of Section 84 of the Act remains undecided in the election petition concerned, the vacancies caused by the resignations of the returned candidates from 141 – Tiruchirappalli (East); 179 – Viralimalai; and 135 – Karur are not available for being filled up under Section 151-A of the Act, and the Election Commission shall not notify a bye-election for any of them. A decision on that claim, for this purpose, includes a final judgment on it, an order striking out the prayer, an order rejecting the election petition, and the withdrawal or abandonment of the claim in accordance with the Act. This declaration operates in respect of a given

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constituency only if, and for so long as, such a claim is in fact pending in the election petition relating to it; where it is found that the election petition contains no such claim, or that the claim has been decided in any of the modes aforesaid, the vacancy shall stand available for being filled up in accordance with law. The Commission's stand in paragraph 8 of its counter dated 24.08.2026 is upheld as being in accordance with law, and the time limit in Section 151-A of the Act will not be treated as breached by reason of the deferral. The prayer that the deferral should continue while the election petitions remain pending after the claim under Section 84 of the Act has been decided is declined.

(c) The prayers of the contesting respondents, including R4, R5, R6 and R11, for a direction to the Commission to notify and hold bye-elections in these three constituencies are declined.

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(d) When a decision of the kind described in direction (b) has been rendered in any of these three constituencies, the Commission shall proceed under Sections 150 and 151-A of the Act for that constituency promptly and without avoidable delay, subject to any order of the Supreme Court. We expect the Commission to bear in mind that the constituency will by then have been without a representative for a long time. The period during which the vacancy remained unavailable for being filled up by reason of the pendency of the claim shall not be counted against the Commission for the purposes of the time limit in Section 151-A of the Act, and the Commission shall be at liberty, where it considers it necessary, to take recourse to clause (b) of the proviso thereto, in accordance with law.

(e) As for 103 – Perundurai, the interim order dated 10.07.2026, as extended, is vacated, and the writ petition is dismissed as regards that

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constituency. The Commission may proceed in accordance with law, subject to any appeal that may be pending or may lie and to any order of the Supreme Court in it. No separate direction to the Commission to hold the bye-election is called for, because it is free to proceed in accordance with law. The period during which the interim order operated shall be excluded in computing the time under Section 151-A of the Act, and the Commission shall be at liberty to take recourse to clause (b) of the proviso thereto, if it so considers necessary.

(f) As for 225 – Ambasamudram, the prayer for a declaration in favour of the runner-up in ELP No. 2 of 2026 having been struck out by the order of the Election Court dated 01.10.2026, the interim order dated 10.07.2026, as extended, is vacated, and the writ petition is dismissed as regards that constituency. The Commission may proceed in accordance with law, subject to any appeal that may

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be pending or may lie and to any order of the Supreme Court in it. No separate direction to the Commission to hold the bye-election is called for, because it is free to proceed in accordance with law. The period during which the interim order operated shall be excluded in computing the time under Section 151-A of the Act, and the Commission shall be at liberty to take recourse to clause (b) of the proviso thereto, if it so considers necessary. ELP No. 2 of 2026 will continue before the Election Court, and nothing in this judgment affects it.

(g) The interim order dated 10.07.2026, as extended, is made final in the manner stated in direction (b) for the three constituencies named there, and to that extent only.

(h) We leave it open to the parties to move appropriate applications in the pending election petitions for expeditious hearing, if so advised.

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(i) We make it clear that we have not expressed any view on the merits of any pending election petitions.

(j) There shall be no order as to costs.

(k) Consequently, the connected writ miscellaneous petitions, including those seeking to vacate the interim order, stand disposed of in terms of this judgment.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)
27.11.2026

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

(sasi)

W.P.No.27064 of 2026

27.11.2026

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