

LETTERS PATENT APPEAL.

Before O. Chinnappa Reddy, Acting C.J. and Surinder Singh, J.

THE STATE OF PUNJAB and others,—Appellants.

versus

SHRI ANANT RAM ETC.,—Respondents.

Letters Patent Appeal No. 347 of 1974

August 12, 1976.

Punjab Gram Panchayat Act (IV of 1953)—Sections 13-B and 101—Punjab Gram Panchayat Election Rules 1960—Rule 3(3)—Rule empowering Government or Deputy Commissioner to modify election programme—Whether ultra vires.

Held, that the essence of Rule 3(3) of the Punjab Gram Panchayat Election Rules 1960 is that it gives the Deputy Commissioner and the Government power to alter the election programme to meet the exigencies of the situation. It is too much to dub the rule as a rule enabling interference with the election process. A situation may arise when it becomes necessary to postpone the poll but it cannot be said that when the poll is again held, it must start from the stage at which it was stopped. In such a case the Government, but the Government only, is given the power to invalidate the prior proceedings. Again, it will be too much to say that one must allow the poll to be completed from the stage where it was stopped and then present an election petition. It is true that the rule is capable of being abused but so is any power entrusted to anyone, anywhere. If any abuse of power is brought to the notice of the Court it will always be open to the Court to strike down the offending exercise of power. Rule 3(3) is, however, valid. (Paras 3 and 4).

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment of Hon'ble Mr. Justice Bhopinder Singh Dhillon, passed in Civil Writ No. 3116 of 1972, on 25th April, 1974.

D. N. Rampal, Sr. D.A.G. (Pb.),—for the appellants.

D. V. Sehgal, Advocate,—for the respondents.

JUDGMENT

O. Chinnappa Reddy, A.C.J.

(1) This appeal under clause X of the Letters Patent is directed against the judgment of a learned Single Judge of this Court declaring Rule 3(3) of the Gram Panchayat Election Rules, 1960, *ultra vires*. The State of Punjab is the appellant in this appeal. Anant Ram and

Damyanti Rani filed the writ petition, out of which the appeal arises, making various allegations. According to them, the Sub-Divisional Officer, Batala, exercising the powers of Deputy Commissioner under Rule 3 of the Gram Panchayat Election Rules issued an election programme for holding elections to the Gram Panchayat of Dharamkot Randhawa. Nominations were to be filed on 5th July, 1972, from 9 a.m. to 11 a.m. 11 a.m. to 12 noon was fixed for the filing of objections to the nominations and for scrutiny. 1 p.m. to 3 p.m. was fixed for withdrawal of nominations. Poll was to be held on 6th July, 1972. Several persons filed their nominations. The Returning Officer scrutinised the nominations and rejected the nomination papers of Shri Mohinder Singh on the ground that he was in arrears of tax. Shri Santokh Singh Randhawa, Deputy Minister, Development, Punjab, happened to be camping at the Panchayat Samiti Rest House, Batala, on 5th July, 1972. According to the allegations of Anant Ram and Damayanti Rani, at the instance of Mohinder Singh, the Minister sent for the Sub-Divisional Officer and demanded an explanation as to why the nomination papers of Mohinder Singh had been rejected. He directed him to postpone the elections. The Sub-Divisional Officer sent for the Returning Officer and asked him to review his order and accept the nomination papers of Mohinder Singh. The Returning Officer refused to do so. Thereupon, it was alleged, at the instance of the Minister, the Sub-Divisional Officer, acting *mala fide* and without jurisdiction, issued an order at dead of the night intervening 5th and 6th July, 1972, postponing the election. He purported to act under Rule 3(3) of the Gram Panchayat Election Rules. This order as well as Rule 3(3) under which the Sub-Divisional Officer purported to act were impugned in the writ petition. At the hearing before the learned Single Judge, the plea of *mala fides* was given up and so it was not considered. The principal attack was on the vires of Rule 3(3). The learned Single Judge declared Rule 3(3) *ultra vires* and allowed the writ petition. The State of Punjab has filed this appeal.

(2) The first question for consideration is, whether Rule 3(3) of the Gram Panchayat Election Rules, 1960, is *ultra vires*. Section 6 of the Punjab Gram Panchayat Act provides for the election of the Chairman of the Gram Sabha and an executive committee to be known as the Gram Panchayat, from among the members of the Gram Sabha. Chapter II-A of the Act provides for the decision of the election disputes. Section 13-B prescribes that no election of a Sarpanch or Panch shall be called in question except by an election

State of Punjab etc. v. Anant Ram etc. (O. Chinnappa
Reddy, Acting C.J.)

petition as provided in Chapter II-A. Section 101 empowers the Government to make rules to carry out the purposes of the Act. In exercise of the powers conferred by section 101, the Government has made elaborate rules to regulate the conduct of the elections. Provision is made for the publication of the election programme, receipt of nominations, scrutiny, poll, counting of votes etc. Rule 3(3) which is impugned is as follows:—

“The Government or the Deputy Commissioner may, by an order in writing, amend, vary or modify the election programme at any time :

Provided that, unless the State Government otherwise directs, no such order shall be deemed to invalidate any proceeding taken before the date of the order.”

(3) The learned Single Judge struck down the rule on the ground that while section 13-B prescribed that no election shall be called in question except by an election petition, the rule enabled the Government not only to interfere with the election process but also to invalidate the election proceedings. We are unable to agree with the learned Single Judge. The essence of the rule is that it gives the Deputy Commissioner and the Government power to alter the election programme to meet the exigencies of the situation. One can well imagine the heat of an election leading to a serious riot. If in order to prevent an apprehended riot an election programme is altered it is all to the good and someone must have the power to judge the situation and to take necessary action. And, who better than the Government or the Deputy Commissioner. Surely it is too much to dub the rule as a rule enabling interference with the election process. Again, one can imagine a situation where a riot breaks out after the commencement of the poll but before it is completed. In a situation like that if it becomes necessary to postpone the poll, it cannot be said that when the poll is again held, it must start from the stage at which it was stopped. In such a case the Government, but the Government only, is given the power to invalidate the prior proceedings. Again, it will be too much to say that one must allow the poll to be completed from the stage where it was stopped and then present an election petition. It is true that the rule is capable of being abused but so is any power entrusted to anyone, anywhere. If any abuse of power is brought to the notice of the Court it will

always be open to the Court to strike down the offending exercise of power. In the present case itself, for example, the Sub-Divisional Officer ordered postponement of the election on the ground of "some serious allegations of misconduct." Though he did not say against whom the allegations of misconduct were made and what these allegations were, in the context of the events that took place it is clear that he was referring to the rejection of the nomination papers of Mohinder Singh by the Returning Officer. It was not for the Sub-Divisional Officer to question the rejection of the nomination papers. That could only be done by way of election petition. The Sub-Divisional Officer could not postpone the election on that ground. He could have postponed the election if there was any apprehension of a breach of the peace as a result of the rejection of the nomination papers. But such an apprehension was not the basis of the order of the Sub-Divisional Officer. The order of the Sub-Divisional Officer is thus a clear instance of abuse of power.

(4) As a result of our foregoing discussion, we hold that Rule 3(3) of the Gram Panchayat Election Rules is valid, but that the order of the Sub-Divisional Officer dated 5th July, 1972, is not valid. The appeal is allowed to the extent that Rule 3(3) is declared valid. No further direction is necessary from this Court as it was represented to us that the elections to the Gram Panchayat have already been held and the Gram Panchayat is functioning. There will be no order as to costs.

H.S.B.

REVISIONAL CRIMINAL

Before M. R. Sharma and K. S. Tiwana, JJ.

MOHINDER SINGH,—*Petitioner*

versus

SHRI DILBAGH RAI,—*Respondent*

Criminal Revision No. 220 of 1974

August 13, 1976.

*Code of Criminal Procedure (Act 2 of 1974)—Section 145—
Litigation pending in a Civil Court—Ad-interim injunction issued*