

in L.P.A. No. 267 of 1970, decided on October 5, 1971. The view that I have taken does not leave the Revenue without any remedy. If the Purchasing—Firm is guilty of violating any of the conditions mentioned in the declaration forms given by it, the Assessing Authority can, if it is so advised, proceed against it under the second proviso to section 5(2)(a)(ii) and in accordance with the other provisions of the Act.

(7) In view of what has been stated above, I allow this petition, set aside the order dated March 29, 1971, passed by the Assessing Authority, Sangrur, but in the circumstances of the case make no order as to costs. Similarly, C.W. No. 3717 of 1971 is also allowed and the order dated February 26, 1971, passed by the Assessing Authority, Sangrur, is set aside, but without any order as to costs.

B.S.G.

CIVIL MISCELLANEOUS

Before S. S. Sandhwalia, J.

SUKHDEV SINGH,—Petitioner.

versus..

THE DEPUTY COMMISSIONER, JULLUNDUR ETC.,—
Respondents.

Civil Writ No. 2065 of 1972.

October 27, 1972.

Gram Panchayat Election Rules (1960)—Rules 5 and 15—Returning Officer appointed under rule 5—Whether can be changed, removed or transferred by the Deputy Commissioner.

Held, that even if there is no express provision in the Gram Panchayat Rules, 1960 for removing or transferring a Returning Officer yet under general principle of law the power of appointment when conferred upon an authority implies a power of removal or dismissal in the same authority and no express power is required to be given by a statutory provision because the same is deemed to be implicit in the power of appointment. The provisions of section 14 of the Punjab General Clauses Act, 1898 clearly gives recognition to this general principle and lays down that the power to appoint includes the power to suspend or dismiss any person appointed in the exercise of the powers conferred for such appointment. The second part of sub-rule (3) of Rule 15 of the Rules

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gives a general power to the Deputy Commissioner to substitute any of the election officers of the three categories mentioned in the Rule. This power is of the widest amplitude as is manifest by the use of the words "any person" and "at any time" in the last lines occurring in the sub-rule. Hence sub-rule (3) of rule 15 confers the power of changing, removing transferring and substituting a Returning Officer on the Deputy Commissioner as well.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, or any other appropriate writ, order or direction be issued quashing and setting aside the election of Gram Panchayat of village Karnana, Tehsil Nawanshahr, District Jullundur, held on 26th June, 1972.

P. S. Mann, Advocate for the petitioners.

I. S. Vimal, Advocate for Advocate-General, for the respondent.

JUDGMENT

SANDHAWALIA, J.—Whether the Deputy Commissioner is empowered to change a returning Officer appointed by him under Rule 5 of the Gram Panchayat Election Rules, 1960 is the only legal issue which has been debated in this writ petition. It arises from the facts detailed hereinafter.

(2) The Deputy Commissioner, Jullundur, acting under the powers conferred on him by the Gram Panchayat Election Rules, 1960, published a programme for holding the election to the Gram Panchayat of village Karnana in district Jullundur. Respondent No. 3 Shri Yash Pal Soni was appointed the Returning Officer by the District Development and Panchayat Officer (*vide* annexure 'A') upon whom the powers of the Deputy Commissioner had been conferred under Rule 48 of the above-said rules. It has been averred that there were two polling stations in the village above-said because it was a large village having more than 1000 votes. The appointment of the Returning Officer is made under rule 5 and further by rule 15 it is provided that if there is only one polling station in the Sabha area, the Returning Officer shall act as the Presiding Officer as well but in case there are more than one polling stations there would have to be appointed one Presiding Officer for each polling station also. The petitioner avers that in the rules, no provision is made for the change of the Returning Officer in contrast to such

a power given to the Deputy Commissioner in regard to the Presiding Officers, Polling Officers and the Polling Assistants.

(3) It is the petitioner's case that during the election proceedings, which had preceded the poll, respondent No. 5, who was contesting for the post of Sarpanch against him picked up a quarrel with the Returning Officer Shri Yash Pal on the 25th June, 1972, and in the presence of a large number of persons he threatened him that he would have him removed. In para 7 it is stated that on the evening of the same day respondent No. 3 was relieved of his post and directed to hand over charge to respondent No. 4 Shri Kultar Singh who was appointed by the authorities to act as the Returning Officer in his place,—*vide* Annexure 'C' to the petition. Subsequently the election was held on the 26th of June, 1972, in which respondent No. 5 was declared elected as a Sarpanch and respondent Nos. 6 to 11 were declared elected as Panches to the Gram Panchayat. The petitioner's case is that the whole election is vitiated on the ground that in the eye of law no validly appointed Returning Officer was acting on the day of the election.

(4) In the written statement filed by the Deputy Commissioner, Jullundur, paras 1 to 3 had been admitted. However, it is stated that the Deputy Commissioner is empowered to appoint another person to act in place of any person appointed by him in regard to the conduct of the elections under rule 15. It is stated that on receipt of a complaint against the concerned Returning Officer he was considered incapable of performing his duty impartially and was consequently replaced. The fact of the election having been conducted by respondent No. 4 wherein respondent No. 5 was elected as the Sarpanch and respondents Nos. 6 to 11 were elected as Panches is admitted. It is averred that the Sub-Divisional Officer (Civil) Nanwanshahr had been duly empowered by the Deputy Commissioner under rule 48 to perform his functions in his Sub-Division,—*vide* Annexure 'A' to the written statement. In paragraph 12 it is stated that the remedy by way of election petition is the only one available to the petitioner. The other official respondents have also filed written statements in consonance with the pleadings of the Deputy Commissioner. The private respondents have filed a separate written statement in which the preliminary objection has been taken that the petitioner not having availed the alternative remedy of an election petition available to him is consequently not entitled to maintain the writ petition. The factual allegations of

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any mis-conduct preceding the poll have been controverted both on behalf of the private and the official respondents in the clearest terms.

(5) This writ petition deserves to fail on the short ground that the petitioner has chosen to rush up to this Court without availing the basically appropriate remedy by way of an election petition guaranteed to him by section 13-0 of the Punjab Gram Panchayat Act, 1952. Mr. Mann for the petitioner cannot dispute that even an infraction of the statutory rules is well covered by the provisions of section 13-0 (d) (iii). No adequate reason for not resorting to this remedy has been shown and I would, therefore, hold that the petitioner is not entitled to claim the relief sought for on this ground alone.

(6) Nevertheless as some semblance of an issue of law has been raised and the matter has been argued at some length, it is best to dispose it of on merits as well.

(7) The core of the argument of Mr. Mann on merits is that once a Returning Officer has been appointed he cannot thereafter be changed, transferred or removed by any authority. Reliance by him has been placed on Rules 5 and 15 of the Act in pressing this rather ingenious plea.

(8) The contention may first be examined in the light of Rule 5 which is in the following terms:—

“Appointment of Returning Officer.—The Deputy Commissioner shall appoint any person to be a Returning Officer to hold the election in a Sabha area. It shall be the duty of the Returning Officer at an election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by these rules.”

It was contended on behalf of the petitioner that this does not provide any mode for the removal or change or transfer of a Returning Officer once appointed and it was argued that no other provision in the Rules gives such a power to the Deputy Commissioner. On these premises the contention was raised that in the absence of an express provision empowering the Deputy Commissioner to remove

or transfer the Returning Officer he could not have done so and the substitution of respondent No. 3 by respondent No. 4, was, therefore, of no validity.

(9) It is not possible to accede to this contention. Even assuming for a moment that no express provision for removing or transferring a Returning Officer exists, still the argument of the petitioner is hardly advanced thereby. As a matter of general law it is well-settled that the power of appointment when conferred upon an authority implies a power of removal or dismissal in the same authority. No express power indeed is necessary to be given by a statutory provision because the same is deemed to be implicit. That apart it has not been disputed in the present case that the provisions of the Punjab General Clauses Act, 1898, would be attracted in construing the Punjab Gram Panchayat Act and the Rules framed thereunder. Section 14 of the Punjab General Clauses Act clearly gives recognition to the above-said general principle and lays down that the power to appoint includes the power to suspend or dismiss any person appointed in exercise of the powers conferred. Consequently the first limb of the argument must fail and is rejected.

(10) Learned Counsel for the petitioner had then fallen back on section 15(3) of the Rules which is as follows:—

“15 (3) The Deputy Commissioner shall also appoint Polling Officers and Polling Assistants to assist the Presiding Officer, and if, before or at the time of poll, the Presiding Officer or the Polling Assistant refuses to act or becomes incapable of acting as such, the Deputy Commissioner shall appoint another person to act as Presiding Officer, or Polling Officer or Polling Assistant, as the case may be, and the Deputy Commissioner may, at any time, if he thinks fit, appoint another person to act in place of any person previously appointed in this behalf.”

On the basis of the above-said provisions it was argued that the power of removing or substituting given thereby to the Deputy Commissioner is confined only to the Presiding Officer, the Polling Officers, and Polling Assistants in an election and does not extend beyond the three categories. It was contended negatively that as the name of the Returning Officer does not in terms find mention in

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the sub-section, consequently by implication the power of removal of a Returning Officer has been taken out of the ambit of the powers of the Deputy Commissioner.

(11) I am unable to agree. The argument loses sight of the last two lines of the above sub-section which read separately is in these terms:—

“..... and the Deputy Commissioner may, at any time, if he thinks fit, appoint another person to act in place of any person previously appointed in this behalf.”

Now it appears to me that this portion of sub-section (3) has to be read disjunctively. The earlier part of the section gives powers as regards the three categories of persons, namely, the Presiding Officer, Polling Officer or the Polling Assistant and provides that the Deputy Commissioner may appoint another person in their place if either of them refuses to act or becomes incapable of acting. On the contention of Mr. Mann the last two lines of the sub-section above quoted would become a mere surplusage and be rendered totally redundant. It is a settled canon of interpretation that meaning must be given to every word of a statutory provision if it can reasonably be so done. Therefore to harmoniously construe the above-said sub-section it follows that a special power *qua* three categories is first given to the Deputy Commissioner and a general power to substitute any of the election officers is given by the last clause of the sub-section. That this power is of the widest amplitude is further made manifest by the use of the words “any person” and “at any time” in the last lines. I, therefore, construe the sub-section to confer a power of substituting the Returning Officer as well on the Deputy Commissioner. The constricted meaning attributed to the above provisions by the petitioner does not appear to be reasonable.

(12) In this context sub-section (1) of rule 15 also deserves notice. It provides that in a Sabha area where there is only one polling station the Returning Officer shall act as a Presiding Officer for conducting the poll. Therefore, it is evident that in such a situation the Returning Officer and the Presiding Officer in fact merged into one person. Indeed Mr. Mann conceded that in such

a situation the Deputy Commissioner would be entitled under sub-clause (3) to substitute or change the Presiding Officers and consequently the Returning Officer as well. No rational reason could be given by Mr. Mann why the said power should be constricted by the mere fact that the polling station in a particular village may be more than one.

(13) Lastly on principle it does not seem plausible that the appointment of a Returning Officer for a Gram Panchayat election should be a matter of such sanctity as to be totally irrevokable. Such a construction would lead only to anomalies if not to absurdity. As for instance in the present case if the appointed Returning Officer may be guilty of gross misconduct yet the Deputy Commissioner would be powerless to change or substitute him. No reason for such a construction as suggested by Mr. Mann could even be given by him. Indeed a power to act expeditiously and change an erring Returning Officer with speed would be a necessary adjunct of the powers vested in the Deputy Commissioner by the Rules to fairly conduct the elections to a Gram Panchayat.

(14) For the abovesaid reasons the contentions of the petitioner fail on merits as well. The petition is hereby dismissed with costs. Counsels fee Rs. 100.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J., Bal Raj Tuli, and M. R. Sharma, JJ.

KARNAIL SINGH,—Petitioner.

versus.

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 3612 of 1973.

November 1, 1974.

Punjab Civil Services Rules, Volume II—Rule 5.32—Constitution of India (1950)—Article 311—Expression ‘appointing authority’ in rule 5.32(c)—Meaning of—State Government or the Governor—Whether appointing authority of all the State Government servants—State Government delegating its power of appointment to a particular officer—Whether divests itself of such power—Excise and Taxation Commissioners’ delegated power of appointment in